

DEC 10 2010 ✓

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI
JEANNE HICKS, Clerk
Deputy

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

ORIGINAL

No.
P1300CR20081339

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION 6
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
THURSDAY JUNE 10, 2010
1:30 P.M. SESSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Testimony of Deputy Scott Joy
Testimony of Deputy Mark Boan
Testimony of EMT Ryan Neil Aspa

LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801

ORIGINAL

LISA A. CHANEY, CR, RPR
CERTIFIED REPORTER

I N D E X
T E S T I M O N Y

NAME	DIRECT	CROSS	REDIRECT	RECROSS	VD
Scott Joy					
Resumed	5(B)				34(S)
Resumed	35				
Resumed		38(S)	65 69		
Further			91	87 95	
Mark Boan	99(B)	117	133		
Further			137		
				139	
Ryan Neil Aspa	143(B)	154			

B = Mr. Butner
S = Mr. Sears

I N D E X
E X H I B I T S

	NUMBER	DESCRIPTION	MARKED FOR IDENTIFICATION	ADMITTED IN EVIDENCE
1	2284	Photograph		5
2	1613	Crime scene log		14
3	2342	Photograph		18
4	2343	Photograph		18
5	2344	Photograph		18
6	2345	Photograph		18
7	2346	Photograph		18
8	2347	Photograph		18
9	2348	Photograph		18
10	2349	Photograph		18
11	2350	Photograph		18
12	2351	Photograph		18
13	2352	Photograph		18
14	2353	Photograph		18
15	2354	Photograph		18
16	954	Voluntary Statement From Renee Girard	32	
17	209	Consent to Search Vehicle		34

LISA A. CHANEY, CR, RPR
CERTIFIED REPORTER

THURSDAY, JUNE 10, 2010
1:30 P.M. SESSION

APPEARANCES:

FOR THE STATE: MR. JOE BUTNER AND
MR. JEFF PAUPORE, DEPUTY COUNTY ATTORNEYS.
FOR THE DEFENDANT: MR. JOHN SEARS AND
MS. ANNE CHAPMAN, ATTORNEYS AT LAW.

(The jurors entered the courtroom.)

(A cell phone rings in the courtroom.)

THE COURT: Well, I was just going to do what
I usually do in the afternoon and that is remind everybody
to turn off their cell phones and pagers.

JUROR: Sorry.

THE COURT: So please turn off your cell phone
and pagers. Record reflects the presence of the jury, the
Defendant, Mr. Sears, Ms. Chapman, Mr. Butner, and
Mr. Paupore.

It didn't happen when I was in the room, so
it's okay.

THE BAILIFF: Is that how the rule reads?

THE COURT: Something like that. Something
like that. Probably before I start I'll note for the
record Lisa Chaney is back with us again to do the court
reporting. She's helping out because her Judge is at a
conference and Roxanne needs a break every now and again.

Thank you, Lisa.

1 THE COURT REPORTER: Sure.

2 THE COURT: Go ahead.

3

4

SCOTT JOY,

5 previously called as a witness, having been sworn, resumed
6 testifying as follows:

7

8

DIRECT EXAMINATION (Resumed)

9

BY MR. BUTNER:

10

Q. Okay. Welcome back from lunch, Deputy Joy.

11

A. Thank you.

12

Q. Let me show you what is admitted into
13 evidence, I believe, as Exhibit 2284 -- it's not. Okay.

14

Where's Mr. Sears? There he is. Mr. Sears,
15 let me show you this.

16

(Mr. Butner and Mr. Sears confer off the record.)

17

THE COURT: 2284 is not in evidence as far as
18 my notes are concerned.

19

MR. BUTNER: 2284. I would move for the
20 admission of Exhibit 2284 at this time, Judge.

21

MR. SEARS: No objection.

22

THE COURT: 2284 is admitted.

23

(Exhibit 2284 was admitted into evidence.)

24

(Mr. Butner and Mr. Sears confer off the record.)

25

MR. BUTNER: May I go ahead then and publish

1 this to the jury?

2 THE COURT: You may.

3 MR. BUTNER: Okay.

4 Q. Do you recognize what is depicted in Exhibit
5 2284?

6 A. Yes, I do.

7 Q. What is that, Deputy Joy?

8 A. That would be Ms. Kennedy laying on the floor.

9 Q. And you took this photo?

10 A. Yes, I did.

11 Q. And do you notice on the carpet there anything
12 of significance that you had noticed when you were at the
13 crime scene?

14 A. There's a bloody handprint to the right of the
15 body.

16 Q. And then down at the bottom of the photograph
17 is the checkbook?

18 A. Correct.

19 Q. Okay. Let me show you what's already admitted
20 into evidence as Exhibit 2330. Do you recognize what's
21 depicted in this?

22 A. Yes, I do.

23 Q. And what is that?

24 A. That would be the office scene as we saw it
25 that night and it looks like it's a daytime photograph.

1 Q. And I'm pointing (indicating) right now to
2 what?

3 A. The overturned bookcase.

4 Q. And is that the bookcase that you observed
5 blood splatter on?

6 A. Yes, it is.

7 Q. And would you describe for us where you
8 observed the blood splatter on that particular bookcase?
9 Right. Feel free to use that laser pointer
10 there.

11 A. There were a couple of spots about half way up
12 along this side (indicating) that was facing the desk.

13 Q. Okay. And did you see any spots located in
14 this (indicating) lower area?

15 A. Not that I remember.

16 Q. Did you ever see any blood splatter at all
17 located on this ladder?

18 A. Not that I remember.

19 Q. And while we're talking about it, the ladder
20 is running across the doorway, right?

21 A. Yes.

22 Q. And there's a little bit of wall right here
23 (indicating) where the door jam is located, correct?

24 A. Correct.

25 Q. On the inside, there's a small area of wall?

1 A. Yes. Between the door and the closet space.

2 Q. Did you notice blood splatter on that small
3 area of wall?

4 A. Yes, I did.

5 Q. So the ladder stretched right across the front
6 area of wall?

7 A. Yes, it did.

8 Q. And there was no blood splatter on the ladder?

9 A. Not that I remember.

10 Q. But there was on the wall?

11 A. Yes.

12 Q. And similarly just outside of the doorway here
13 (indicating) were those plastic totes?

14 A. Correct.

15 Q. And there did you notice blood splatter on
16 those?

17 A. Yes, I did.

18 Q. And was there blood splatter at the base of
19 the doorway here (indicating)?

20 A. Yes, there was.

21 Q. And the ladder went right across that
22 (indicating) particular area?

23 A. Yes, it did.

24 Q. And no blood splatter on the ladder?

25 A. Not that I remember.

1 Q. Okay. Thank you.

2 We can change now. Thanks. Thanks, Phil.

3 Now, you basically did the protective sweep at
4 Bridle Path and took photographs of the interior part of
5 the residence?

6 A. Yes.

7 Q. And then did you go outside of the residence
8 and perform additional duties?

9 A. Yes, I did.

10 Q. What did you do?

11 A. After I was done taking photographs, a couple
12 of the deputies and I went outside of the building to
13 check the rest of the property.

14 Q. And describe for us basically what you did in
15 checking the rest of the property?

16 A. As we left we took the same route that we went
17 in and out of those same French Doors. As we went out the
18 doors, we took a left and headed across the walkway
19 towards the covered patio on the east side.

20 As we were walking through there, we're
21 looking to see if there is anybody out and around the
22 property. Turned left, which would be north along the
23 property there (indicating) to the backside of the house,
24 and then again turned left following the walkway there
25 (indicating) and saw that there was another door to the

1 outside that went into the garage area.

2 Q. Okay. You mean another door coming out of the
3 Bridle Path residence?

4 A. It was actually an exterior door for the
5 garage that was facing to the east with the attached
6 garage there (indicating).

7 Q. So you went around the corner of the house and
8 went straight toward the garage?

9 A. Yes, sir.

10 Q. And the garage door, not the one for cars, but
11 rather a regular doorway for people was facing you?

12 A. Yes.

13 Q. And what did you do in connection with that?

14 A. We went into the garage. There were a couple
15 of vehicles there. Looked in the vehicles to see if
16 anybody was in them at that time. We didn't see anybody
17 there and then exited the garage and went out toward the
18 stable.

19 Q. So the door for the garage that you entered
20 through, was that -- what was the status of that door when
21 you first encountered it?

22 A. I believe it was slightly ajarred. I don't
23 know if it was fully opened though.

24 Q. Okay. But it wasn't -- it wasn't locked?

25 A. Correct.

1 Q. And did you note what kind of vehicles were in
2 the garage?

3 A. I don't remember.

4 Q. Okay. Did you search those vehicles?

5 A. I did a cursory visual search. Just looking
6 to see if anybody was seated in them or laying down in the
7 back or underneath them.

8 Q. But you didn't crawl inside and go through the
9 containers and so forth inside those vehicles?

10 A. No, sir.

11 Q. Just making sure that nobody was hiding in
12 those vehicles?

13 A. Correct.

14 Q. Okay. And after searching the garage area and
15 those particular vehicles, then where did you go?

16 A. Came out of the garage and turned again to the
17 north. We saw there was another out building out there
18 that turned out to be the stable and so we went there.

19 Looked in there real quick. Saw a short,
20 about chest high wall off to the east and just south of
21 the stable and turned out to be like an enclosed garden
22 area. Looked over the wall. Didn't see anybody in there
23 and went back into the house.

24 Q. So you basically did a perimeter kind of
25 search for protective sweep?

1 A. Correct.

2 Q. And encountered nobody?

3 A. Correct.

4 Q. And after concluding that sweep of the area,
5 then where did you go?

6 A. We went back to the house. Talked -- I
7 believe spoke to Sergeant Acton and then went out to the
8 street to set up crime scene tape and start a walk.

9 Q. Okay. So did you help string that crime scene
10 tape that was around the Bridle Path residence?

11 A. Yes.

12 Q. And after doing that, what additional duties
13 did you perform as part of this investigation?

14 A. From there, you know, I got Deputy Schilling
15 to start the crime scene log. It was nearing the end of
16 his shift. Drove him back to the Prescott Office so he
17 could end his shift because he's on training not allowed
18 -- they are not authorized for overtime. So after
19 dropping him off, I went back to the Bridle Path house and
20 met up again with Sergeant -- excuse me -- Sergeant
21 Howard.

22 Q. Now, you got Deputy Schilling to start the
23 crime scene log, did he have to pass that log off to
24 somebody?

25 A. Yes, he did.

1 Q. Who did he pass it off to?

2 A. I believe I was to Deputy Boan.

3 Q. And what's the purpose of the crime scene log?

4 A. To log date, times, and personnel that are
5 coming and leaving the scene.

6 Q. And did you check the crime scene log to make
7 sure that Deputy Schilling had started it properly?

8 A. Yes, I did.

9 Q. Let me show you what has been marked as
10 Exhibit 1631 -- no. My dyslexia kicked in. I think --
11 where did I put that? 1613. Okay. Let me show you
12 what's been marked as Exhibit 1613.

13 May I approach, Judge?

14 THE COURT: You may.

15 MR. BUTNER:

16 Q. Would you take a look at that particular
17 document. Do you recognize that?

18 A. Yes, I do.

19 Q. At least the start of it, right?

20 A. Yes, sir.

21 Q. And what is that?

22 A. This would be the Yavapai County Sheriff's
23 Office Crime Scene Sign-in, dated 7-2-08 for the address
24 7485 Bridle Path.

25 Q. Is that the log that you had Deputy Schilling

1 start?

2 A. Yes, it is.

3 MR. BUTNER: I would move for the admission of
4 Exhibit 1613 at this time.

5 MR. SEARS: Could I see it for one second?

6 MR. BUTNER: Yes, sir.

7 MR. SEARS: No objection to 1613.

8 MR. BUTNER: 1613.

9 THE COURT: 1613 is admitted.

10 (Exhibit 1613 was admitted into evidence.)

11 MR. BUTNER: Thank you. Let me just take a
12 look at this for a second.

13 May I publish this, Your Honor?

14 THE COURT: You may.

15 MR. BUTNER: Thank you.

16 Q. Okay. This is the crime scene log that you
17 just testified about right, Deputy Joy?

18 A. Yes, it is.

19 Q. Taking a look at this there is a notation that
20 goes right across the top that says, these are 97 times
21 first responders.

22 A. Yes, sir.

23 Q. What does that mean?

24 A. 97 is our radio code for when we arrive on
25 scene and so those are through dispatch. We get those

1 times. They are logged electronically into our radio logs
2 and into the call. So when we arrive on the scene we'll
3 say we're 97 and that's noted in dispatch. So those are
4 the times from dispatch saying when we arrived.

5 Q. I see. So, for example, Deputy Taintor it
6 says 2052 or 8:52 hours -- 8:52 in the evening. That
7 means that's the time that he called in and said he
8 arrived?

9 A. That he radioed in, yes, sir.

10 Q. And where it says, Joy there, 2117, is that
11 the time that you called in?

12 A. Yes, it is.

13 Q. And, of course, Schilling was with you in your
14 car?

15 A. Yes, sir.

16 Q. And Sergeant Howard apparently arrived almost
17 exactly the same time?

18 A. Yes, sir.

19 Q. Okay. Thank you. Okay. After getting
20 Schilling to do -- I'll do that. After getting Deputy
21 Schilling to start the crime scene log, where -- what did
22 you do then?

23 A. At that point he started the log. We had the
24 crime scene tape up. And I believe that is -- right after
25 that is when I brought him back to the Prescott Office so

1 he could end his shift.

2 Q. Okay. He was on field training at that point
3 in time?

4 A. Yes, he was.

5 Q. So you brought him into the Prescott Sheriff's
6 Office and left the crime scene?

7 A. Yes, I did.

8 Q. And when I say the Prescott Sheriff's Office,
9 I mean the Prescott Office for the Yavapai County Sheriff?

10 A. Correct.

11 Q. Okay. Dropped him off?

12 A. And got in my vehicle and returned.

13 Q. And you went back out to Bridle Path?

14 A. Yes, I did.

15 Q. And when you got back out to Bridle Path, what
16 did you do at that point?

17 A. I got Sergeant Howard and we were directed to
18 go up to the end of Glenshandra to meet with Sergeant
19 Acton and Deputy Taintor.

20 Q. Did you go up to the end of Glenshandra?

21 A. Yes, we did.

22 Q. What did you find when you got to the end of
23 Glenshandra?

24 A. Deputy Taintor and Sergeant Acton had been
25 parked there. They had started canvassing, talking, you

1 know, knocking on doors, and at that point, you know, they
2 had completed what they were told to have done and so we
3 responded back at the house.

4 Q. So you went back to the Bridle Path address?

5 A. Correct.

6 Q. Did you assist in any of the canvassing over
7 on Glenshandra?

8 A. Just very cursory and I didn't speak to
9 anybody up there.

10 Q. Okay. And upon returning to Bridle Path, what
11 did you do from there?

12 A. At that point I was advised to go to an
13 address over on Alpine Meadows and to sit at
14 Mr. DeMocker's house.

15 Q. So you then went to Mr. DeMocker's residence
16 at 1716 Alpine Meadows Lane?

17 A. Yes, sir.

18 Q. Okay. And what was the reason that you were
19 dispatched over to Alpine Meadows?

20 A. Well, I was following orders to go over there
21 from the reason that, you know, at that point they thought
22 that there were perhaps somebody or someone over there
23 that could be spoken to or might have some information on
24 Mr. DeMocker.

25 Q. Okay. And approximately what time did you go

1 to Alpine Meadows?

2 A. That would have been possibly 1 a.m.

3 Q. And were -- at that point in time were other
4 deputies getting ready or preparing a search warrant for
5 Mr. DeMocker's residence?

6 A. Not at that point yet. No, sir.

7 Q. Okay. Let me show you what's been marked as
8 exhibit --

9 (Mr. Butner and Defense Counsel confer off the record.)

10 MR. BUTNER: Okay. Judge, sorry for fumbling
11 around like that, and it's my fault for not getting them
12 properly in order, but Exhibits 2342 through 2354 I
13 believe we have a stipulation that they may be admitted
14 into evidence at this time.

15 THE COURT: Is that agreed upon, Mr. Sears?

16 MR. SEARS: No objection.

17 THE COURT: All right. 2342 inclusive through
18 2354 inclusive are admitted.

19 (Exhibits Numbers 2342, 2343, 2344, 2345,
20 2346, 2347, 2348, 2349, 2350, 2351, 2352,
21 2353 and 2354 were admitted into evidence.)

22 MR. BUTNER: Thank you. Okay.

23 Q. Let me show you what's been admitted into
24 evidence as Exhibit 2342. Do you recognize what's
25 depicted in that photograph?

1 A. It looks like the residence in Alpine Meadows.

2 Q. Is that the entry area to the residence at
3 Alpine Meadows?

4 A. Yes, sir.

5 Q. Let me show you what's marked as Exhibit
6 Number 2343. Do you recognize what's depicted in that?

7 A. Yes. That's the driveway access into the
8 garage area for the multiple homes that are attached in
9 there.

10 Q. Okay. And is this the driveway through that
11 arch into the courtyard where Mr. DeMocker's condominium
12 was located?

13 A. Yes.

14 Q. In fact, is this vehicle right here
15 (indicating) your sheriff's vehicle?

16 A. No, sir, it's not.

17 Q. It's somebody else's?

18 A. Yes, it is.

19 Q. Okay. And then let me show you what's been
20 marked as Exhibit 2344. Okay. Do you recognize what that
21 is?

22 A. Those would be the numeric signs above the
23 archway saying which condos are located in what direction.

24 Q. And Mr. DeMocker's condo was he in Number
25 1405?

1 A. I don't recall the numbers. I know it was on
2 the left.

3 Q. Okay. And let me show you what's been marked
4 as Exhibit 2345. Do you recognize what's depicted in that
5 particular photograph?

6 A. Yes, I do. That's the walkway that goes to
7 the left from the archway outside of the courtyard area.

8 Q. So that's the walkway across the front of the
9 condo?

10 A. Yes, it is.

11 Q. Okay. And then Exhibit 2346. What is
12 depicted in that?

13 A. That would be the walkway going towards the
14 door for Mr. DeMocker's condo and the one adjacent to it.

15 Q. So it's going down the side of the
16 condominium?

17 A. Yes, it is.

18 Q. Towards the golf course area located at the
19 back?

20 A. Yes, sir.

21 Q. Okay. And this first building, this isn't the
22 building in which Mr. DeMocker's condominium was located,
23 right?

24 A. The first doorway area, no, it's not.

25 Q. But towards the back?

1 A. Yes, sir.

2 Q. And let me show you what's been marked as
3 2347. Oh, boy. Do you recognize what's depicted in that?

4 A. Yeah. That would be the archway going from
5 the walkway on the outside of the condos back into the
6 courtyard where the garages are located.

7 Q. The light on this is just not so good. Okay.
8 And let me show you what's marked as 2348. What is
9 depicted in this photograph, if you can tell?

10 A. Looks like the facia of the building on the
11 east side.

12 Q. The backside of the condominium --

13 A. Yes, sir.

14 Q. -- that faces the golf course located out to
15 the east?

16 A. Located -- I believe it's to the east, yes,
17 sir.

18 Q. 2340 -- let me show you Exhibit 2350. Do you
19 recognize what's depicted in that photograph?

20 A. Looks like the walkway going around the other
21 side of the condos.

22 Q. Let me show you what's been marked as Exhibit
23 Number 2352. Do you recognize what's depicted in that
24 exhibit?

25 A. That would be the front door to Mr. DeMocker's

1 condo.

2 Q. When you went over to Mr. DeMocker's
3 condominium, is that where you stationed yourself?

4 A. Yes, it is.

5 Q. And let me show you Exhibit 2353. That's a
6 closer, better picture, right, of that same doorway?

7 A. Yes, it is.

8 Q. And then lastly this is Exhibit 2354. Do you
9 recognize what's depicted in that?

10 A. Those would be the garage doors on the inside
11 of the courtyard.

12 Q. Okay. So this is the garage door for
13 Mr. DeMocker's condominium right here (indicating)?

14 A. No, sir. I thought it was, but it's not.
15 It's actually the one to the left.

16 Q. It's over here (indicating)?

17 A. Yes, sir.

18 Q. Okay. Where is Mr. DeMocker's residence
19 located?

20 A. Above there (indicating) and the doorway is on
21 the other side of the building. I was --

22 Q. So his residence is up here (indicating)?

23 A. I believe, yes, sir.

24 Q. Okay. And the doorway is located around the
25 backside?

1 A. Around to the left and then down the walkway
2 again.

3 Q. Was it through that arch (indicating)?

4 A. Yes.

5 Q. So when you went over to the residence at
6 1405, Condominium Number 1405 at Alpine Meadows there,
7 where did you park your vehicle?

8 A. In front of that garage door on the right.

9 Q. In front of this garage door (indicating)?

10 A. Yes, sir.

11 Q. Because you thought it went with this
12 residence (indicating)?

13 A. Correct.

14 Q. But, in fact, Mr. DeMocker's garage door was
15 this one (indicating)?

16 A. Correct.

17 Q. Okay. And you then situated yourself in front
18 of the front door right there (indicating)?

19 A. Yes, sir.

20 Q. But that's located on the backside of the
21 condominium?

22 A. Yes, sir.

23 Q. On the side opposite the garage doors that we
24 were just looking at?

25 A. Yes, sir.

1 Q. And through that arched walkway that we looked
2 at in a couple of pictures back?

3 A. Yes.

4 Q. Through there (indicating)?

5 A. Yes, sir.

6 Q. So this is a photograph from the outside of
7 the walkway looking into the courtyard?

8 A. Correct.

9 Q. About what time did you go over to
10 Mr. DeMocker's residence?

11 A. I believe I got there somewhere around 1 a.m.

12 Q. Okay. And situated yourself outside
13 Mr. DeMocker's front door?

14 A. I parked, found the number that I was going
15 to, repositioned my vehicle in front of the garage that I
16 thought was the correct one, because of the alignment of
17 the doors, and got a chair, went to the front, set my
18 chair, and then just started a foot patrol and, you know,
19 checked around the building every 5, 10 minutes.

20 Q. Just walking around the building --

21 A. Yes, sir.

22 Q. -- to make sure that nobody had entered?

23 A. Correct.

24 Q. You spent the night there basically; is that
25 correct?

1 A. That's correct.

2 Q. Until approximately what time?

3 A. Approximately 6:30 that morning.

4 Q. Okay. And did you encounter anybody while you
5 were there?

6 A. I did.

7 Q. Who did you encounter?

8 A. I spoke with a Ms. Renee Girard.

9 Q. So you're there until 6:30 a.m. What time did
10 you meet Ms. Renee Girard?

11 A. I don't recall the exact time.

12 Q. Well, was it close to 6:30 a.m. or was it
13 sometime before that?

14 A. It was sometime before there. Probably
15 between 2 and 4 possibly.

16 Q. And how was it that you came into contact with
17 Ms. Girard?

18 A. I received a phone call from one of the
19 detectives that was out at the house that said that she
20 was supposedly there and, you know, he asked me to get a
21 statement from her.

22 Q. Okay. And did you obtain a statement from
23 Ms. Girard?

24 A. Yes, I did.

25 Q. And was it called a voluntary statement?

1 A. Yes, it is.

2 Q. Did you also get a consent to search from
3 Ms. Girard to search her vehicle?

4 A. Yes, I did.

5 Q. Okay. She signed both of those things?

6 A. Yes.

7 Q. And provided them to you?

8 A. Yes.

9 Q. Tell us how it was that you encountered
10 Ms. Girard, please.

11 A. The Detective had called and said that she was
12 in the area, that she had already been to the house and
13 that she was returning and would be pulling into the
14 driveway. So I went out to the front of the house, the
15 condo building, and waited for her to drive up.

16 Q. Okay. One of the other detectives contacted
17 you?

18 A. Yes, sir.

19 Q. And indicated that she had already been to the
20 house?

21 A. Yes, sir.

22 Q. Okay. Did you find out how she had managed to
23 go to the house while you were there?

24 A. She told me that -- when I spoke to her --
25 MR. SEARS: Hearsay.

1 THE COURT: Sustained.

2 MR. SEARS: Move to strike his answer.

3 THE COURT: Didn't have an answer.

4 MR. BUTNER:

5 Q. You were situated at the front door most of
6 the time?

7 A. Yes, sir.

8 Q. With your car parked in what you thought was
9 in front of the garage door for the DeMocker residence,
10 right?

11 A. Correct.

12 Q. But you discovered at a later point in time
13 that your vehicle was not parked in the correct place?

14 A. Yes, sir.

15 Q. And it should have been parked where?

16 A. It -- to the garage door to the left of where
17 I was at.

18 Q. Okay. And did you find out at a later point
19 in time that someone had accessed the residence because
20 your car was parked in the wrong place, so to speak, to
21 block the garage door?

22 A. Yes, sir.

23 Q. Was it Renee Girard that you found out had
24 gotten in there?

25 A. Yes, it is.

1 Q. She didn't go in the front door?

2 A. No, sir.

3 Q. She went in the garage?

4 A. Yes, sir.

5 Q. Okay. So you met Ms. Girard where?

6 A. In the driveway out in front of the archway.

7 Q. In front of that archway that we had in the
8 photograph or in the archway all the way out in front?

9 A. All the way out in front that leads to the
10 garage area to the courtyard.

11 Q. And did you ask her to give you a voluntary
12 statement at that point in time?

13 A. I asked if she would, yes.

14 Q. And did she agree do so?

15 A. Yes, she did.

16 Q. And let me show you what's been marked as
17 Exhibit Number 954?

18 May I approach, Your Honor?

19 THE COURT: You may.

20 MR. BUTNER: Thank you.

21 Q. Do you recognize this particular document?

22 A. Yes, I do.

23 Q. And what is it?

24 A. That would be the voluntary statement from
25 Renee Girard.

1 Q. And did she execute it that day?

2 A. Yes, she did.

3 Q. In your presence?

4 A. Yes, sir.

5 Q. Where was she when she wrote this out?

6 A. Standing in the driveway prior to going into
7 the courtyard.

8 Q. And at approximately what time was it?

9 A. I've got it dated and timed.

10 Q. Don't look at the statement. If you could
11 tell us, you can look at the statement to refresh your
12 recollection, but don't testify from what the statement
13 says.

14 A. Yeah. It is 4:16 a.m.

15 Q. So you received this from her at about 4:16 in
16 the morning on July the 3rd of 2008?

17 A. Yes, sir.

18 Q. Okay. And was it voluntary on her part?

19 A. Yes, it was.

20 Q. You just asked her to give it to you?

21 A. Yes, I did.

22 Q. You didn't force her to?

23 A. No, sir.

24 MR. BUTNER: Okay. Judge, I'd move the
25 admission of Exhibit Number 954 at this time.

1 MR. SEARS: It's the handwritten hearsay
2 statement of the party. I would object.

3 THE COURT: Sustained at this point.

4 MR. BUTNER: I understand.

5 Q. And that's not a very good copy is it, Deputy
6 Joy?

7 A. No, sir. It didn't come out very clear.

8 Q. Did you bring the original with you today?

9 A. Yes, I did.

10 Q. So that we could go ahead and at least have
11 that marked for evidentiary purposes.

12 A. Yes, sir.

13 Q. Is it right there with you up on the witness
14 stand?

15 A. Yes, it is.

16 MR. BUTNER: Okay. I'd ask that he be allowed
17 to do that at this time so we can substitute that at the
18 appropriate time, Judge.

19 THE COURT: Looking at the numbers what's --
20 can 209 be used for?

21 MR. SEARS: Yeah. 209 is the number we have,
22 Your Honor, for both the consent form and the statement
23 and it appears there is another incidence where there's
24 been marking of the same exhibit by both sides perhaps.

25 THE COURT: Okay. Can we use the original as

1 209? As part of 209?

2 MR. SEARS: He wants -- he's talking about
3 substituting the original for --

4 THE COURT: 954?

5 MR. SEARS: -- another copy.

6 THE COURT: Okay.

7 MR. BUTNER: Yes, I would like to do that.

8 THE COURT: Let's -- since we've been talking
9 about 954 and already discussed that let's substitute the
10 original -- you can mark the original as 954 rather
11 than --

12 MR. BUTNER: Could we go ahead and take that
13 out of the envelope?

14 THE COURT: Yes.

15 MR. SEARS: If I could see that.

16 THE COURT: Would both of you satisfy
17 yourselves that we're talking about the same document?

18 MR. SEARS: I do, your Honor, because the
19 photo copy I have something's cut off at the bottom.

20 (Mr. Butner and Mr. Sears confer off the record.)

21 (The Judge and the Clerk confer off the record)

22 MR. BUTNER: Thank you, sir.

23 THE COURT: Both counsel are satisfied that
24 the original should be substituted and it's the same
25 document that was referred to?

1 MR. SEARS: Yeah. The photo copies don't have
2 all of the writing on it that's appearing on the original.
3 So the original is much better.

4 THE COURT: There being no objection I'll
5 direct the Clerk to destroy the formally marked 954 and to
6 substitute the original as 954.

7 MR. BUTNER: Thank you.

8 THE COURT: Perhaps just get rid of that one.
9 (Exhibit Number 954, the original, was
10 marked for identification.)

11 (Mr. Butner and Mr. Sears confer off the record.)

12 MR. BUTNER: Thank you. Thank you very much,
13 sir. I'll use that at a later time. Thank you.

14 Q. Let me show you what's been marked as Exhibit
15 Number 209.

16 May I approach again, Judge?

17 THE COURT: You may.

18 MR. BUTNER: Thank you.

19 Q. Do you recognize that particular document?

20 A. Yes, I do.

21 Q. What is it?

22 A. That's a consent to search vehicle form.

23 Q. And did you obtain that particular document
24 from Renee Girard?

25 A. Yes, I did.

1 Q. Would you describe for us the circumstances
2 under which you did that?

3 A. I was asked to look into her vehicle. Prior
4 to doing so I spoke to her and asked if she would grant
5 permission in writing for us to take a look inside of her
6 vehicle.

7 Q. And what did she indicate to you?

8 A. That she would allow that.

9 Q. And did you give her this written consent to
10 search form?

11 A. Yes, I did.

12 Q. And did she execute it in your presence?

13 A. Yes, she did.

14 Q. Was this at approximately the same time that
15 you obtained the voluntary statement from her?

16 A. Yes, sir.

17 MR. BUTNER: Okay. I'd move for the admission
18 at this time of Exhibit Number 209.

19 MR. SEARS: I have a question or two on Voir
20 Dire.

21 THE COURT: You may.

22 MR. SEARS: Thank you.

23

24

25

VOIR DIRE EXAMINATION

BY MR. SEARS:

Q. Deputy, do you have 209 in front of you there?

A. Yes, I do.

Q. On this preprint form, the person is -- was being asked to give consent to search in this case a vehicle. It says they've been dually advised of their constitutional rights. Tell me how you did that in this case?

A. I read that to her.

Q. And then let her read it again?

A. Yes, sir.

Q. Did she have any questions?

A. No, she did not.

Q. Okay. One of the rights that she had was that she could just refuse.

A. Correct.

Q. Okay. Now, had you already looked in her car?

A. No, sir.

Q. You hadn't done -- you hadn't even looked in the windows?

A. No, sir.

MR. SEARS: Okay. No objection, Your Honor.

THE COURT: 209 is admitted.

(Exhibit 209 was admitted into evidence.)

1 DIRECT EXAMINATION (Resumed)

2 BY MR. BUTNER:

3 Q. So after obtaining the consent to search form
4 from Ms. Girard, what did you do?5 A. I, you know, got the consent form signed,
6 handed it to Sergeant Howard and began to look into her
7 vehicle, you know, through, you know, the trunk space,
8 back seat, floorboards, under the front seat, glove box
9 and common areas of the vehicle.10 Q. Okay. And do you recall what kind of vehicle
11 it was?

12 A. It was a white Toyota Camary.

13 Q. Was it that pearlescent white color?

14 A. It was white.

15 Q. Okay. And when you were searching this
16 vehicle, did you notice whether it had a car seat in it?

17 A. I believe it did in the back seat, yes, sir.

18 Q. Okay. And did you search around the car seat?

19 A. Yes, I did.

20 Q. Would you describe for us how you searched
21 around the car seat?22 A. I lifted the car seat and moved it to the
23 side, looked under and around it.24 Q. Is that basically the standard way that you do
25 a car search?

1 A. Yes, sir.

2 Q. And that includes a search with a car seat?

3 A. Correct.

4 Q. Make sure that you lift the seat up and look
5 in the seat and so forth?

6 A. Yes, sir.

7 Q. Did you find anything of any significance when
8 you conducted this search?

9 A. No, sir.

10 Q. Now, this was at about 4:15, 4:30 in the
11 morning, right?

12 A. Yes, sir.

13 Q. Where were you when you were doing this
14 search?

15 A. Out in the driveway. Still outside the
16 archway that goes to the courtyard and garages.

17 Q. And I'm assuming that it was still dark?

18 A. Yes, sir.

19 Q. So were you using your flashlight?

20 A. Yes, I was.

21 Q. And after conducting that search, then what
22 did you do?

23 A. After that was done Sergeant Howard took the
24 paperwork from me and Ms. Girard left and I stayed on the
25 scene until I was relieved.

1 Q. And you indicated that you stayed on scene
2 until approximately 6:30 in the morning?

3 A. Yes, sir.

4 Q. And did anything eventful occur between the
5 time that you had encountered Ms. Girard and the time that
6 you got off your shift at 6:30 in the morning?

7 A. Other than a couple of phone calls I received,
8 no, sir.

9 Q. Did you perform any further duties in
10 connection with this investigation from 4:30 til 6:30 in
11 the morning aside from keeping an eye on Mr. DeMocker's
12 condominium?

13 A. No, sir.

14 Q. Were you relieved at 6:30?

15 A. Approximately, yes, sir.

16 Q. Who relieved you?

17 A. That would be Deputy Marv Cline.

18 Q. And did you tell Mr. -- did you tell Deputy
19 Cline about the problems with the garage doors and where
20 he should keep an eye out?

21 A. At that point, yes, sir.

22 Q. You informed him where Mr. DeMocker's garage
23 door was and where his front door was?

24 A. Yes, sir.

25 (Mr. Butner and Mr. Paupore confer off the record.)

1 MR. BUTNER:

2 Q. This car seat that was in the back of
3 Ms. Girard's vehicle would you describe what we're talking
4 about when we're discussing a car seat, is this for a
5 small child, an infant?

6 A. Child safety seat with restraints, yes, sir.

7 Q. Did you have an understanding as to what the
8 seat was there for?

9 A. Yes, sir.

10 Q. What was that?

11 A. For Ms. Girard's grandson.

12 Q. Was the grandson there with her at that time?

13 A. No, sir.

14 MR. BUTNER: All right. I don't have any
15 further questions of this witness at this time.

16

17 CROSS-EXAMINATION

18 BY MR. SEARS:

19 Q. Good afternoon, Deputy,

20 A. Good afternoon, sir.

21 Q. Glad to see you. Let me show you 2317 in
22 evidence. Do you recognize this as part of the front
23 driveway at the Bridle Path location?

24 A. Yes, sir, I do.

25 Q. That's the corner of the guest house off to

1 the right and the corner of the main house off to the
2 left, right?

3 A. Yes, sir.

4 Q. There's a wall and this wall (indicating) and
5 archway (indicating) that eventually connects the two
6 structures, right?

7 A. Yes.

8 Q. Do you have any idea who's automobile tire
9 prints that is in the dirt there?

10 A. No idea, sir.

11 Q. Did you park your car up in that area?

12 A. No, sir.

13 Q. Did you park your car out in the road?

14 A. On the street, yes, sir.

15 Q. Were you told to park your car out on the
16 road?

17 A. It's general protocol that we park on the road
18 to make our approach to the houses.

19 Q. Did you see Deputy Taintor's car parked up in
20 this area?

21 A. No, sir.

22 Q. Where was his vehicle?

23 A. On the street as well.

24 Q. But by the time you got there it had been
25 moved back?

1 A. It was on the street when I got there.

2 Q. Okay. Tell me which one of the deputies, if
3 you know, was responsible for investigating these
4 automobile tire impressions we see here in this
5 photograph?

6 A. I do not know, sir.

7 Q. Not you?

8 A. Not me, no, sir.

9 Q. Did you see Steve DeMocker at Bridle Path that
10 night?

11 A. No, sir.

12 Q. Did you talk to anyone that night that said
13 they seen Steve DeMocker at Bridle Path?

14 A. I believe Commander Mascher had said that he
15 was there, but I did not see him.

16 Q. Was there -- or they had some evidence he was
17 there. Anybody say they saw him?

18 A. Yes, sir.

19 Q. Commander Mascher said he saw Mr. DeMocker at
20 Bridle Path that night?

21 A. At the end of the night.

22 Q. Oh, I see. I'm sorry. It was a bad question.
23 Mr. DeMocker came after. I'm sorry. Before the body was
24 discovered?

25 A. No, sir.

1 Q. Okay. I apologize. That was a bad question.
2 Let me show you 2314 in evidence. Do you recognize that
3 hallway?

4 A. Yes, sir.

5 Q. That's the hallway in the center of the main
6 house at Bridle Path, correct?

7 A. Correct.

8 Q. And a couple of deputies at the end. If I
9 told you that was Matt Taintor on the left and Candice
10 Acton on the right, would that seem about right?

11 A. I believe so, yes, sir.

12 Q. And do you know it looks like a rolling bag or
13 bag of some kind in there. Do you have any idea what that
14 is?

15 A. Piece of luggage in the hallway I believe.

16 Q. Okay. Now, you got that laser pointer there?

17 A. Yes, sir.

18 Q. Can I have that for a second. Thanks.

19 Up here as you walk down this hallway, can you
20 see up here (indicating) in the top there's what appears
21 to be a space.

22 A. Yes, sir.

23 Q. When you were clearing the residence, were you
24 aware of that space up there?

25 A. No, sir.

1 Q. Did you later become aware that that's -- I
2 don't know if you can really call it a loft, but that's an
3 open space up there?

4 A. Yes, sir.

5 Q. Okay. Did you ever look up in there?

6 A. No, I did not.

7 Q. Do you know if anybody else did?

8 A. I do not know.

9 Q. When did you become aware that that open space
10 was up in there?

11 A. After coming out of the room.

12 Q. You could see up there?

13 A. I could see the space, yes.

14 Q. Could you see anything up there?

15 A. No, sir.

16 Q. Do you know how that space is accessed?

17 A. I do not.

18 Q. How about the ladder you had found in the
19 other room, would that reach up there?

20 A. It looks like it would be high enough to reach
21 that, yes, sir.

22 Q. There's nothing about that ladder that
23 requires it to be clipped in the area we saw to be used in
24 the -- getting up into that loft, it could just be laid up
25 against the wall, couldn't it?

1 A. It could be, yes, sir.

2 Q. Okay. If it weren't that ladder being used up
3 there, are you aware of any other way to get up into that
4 open space up there?

5 A. No, sir.

6 Q. Was there anything up there when you saw it?

7 A. I didn't look up there, sir. I could see --
8 what I could see was from ground level, but I wasn't
9 lifted up in any way to take a look.

10 Q. Okay. And from where you were, you couldn't
11 see if there were boxes or suit cases or anything else?

12 A. Not that I remember, no, sir.

13 Q. Do you know where the suit case came from?

14 A. No, sir.

15 Q. Do you know why it's in the hallway?

16 A. No.

17 Q. Do you know who it belongs to?

18 A. No, sir.

19 Q. Let's talk about the dog since we got a
20 picture of a dog here. I think you said that when you
21 came up with the entry team to the door you're on the
22 point and so you look through the glass and there are
23 these dogs, presumably this one and another one, inside
24 barking, right?

25 A. Yes, sir.

1 Q. And you opened the door and they ran out?

2 A. Yes, they did.

3 Q. How did they get back in the house?

4 A. I don't know.

5 Q. This one's back in the house, right?

6 A. Yes, it is.

7 Q. Is there a third dog? Is this a third dog?

8 A. As far as I can remember there were only the
9 two dogs. That one and the darker dog.

10 Q. A darker dog. And a dog that looks like this
11 one?

12 A. Yes, sir.

13 Q. Okay. Did anybody talk about finding a third
14 dog?

15 A. Not that I remember, no, sir.

16 Q. Did anybody put the dogs any place while you
17 were there?

18 A. I believe they were, but I'm not certain on
19 that.

20 Q. In the laundry room or in this other bedroom,
21 did you see them in there?

22 A. I didn't see them in there, no, sir.

23 Q. Okay. When you got there the dogs were loose
24 inside the house, right?

25 A. When I got there, yes, sir.

1 Q. And did they -- they come back in the house?
2 Did you see them in the house again? Did you see that dog
3 back in the house again?

4 A. Honestly, I don't remember seeing the dogs in
5 the house.

6 Q. If this is Deputy Taintor and Sergeant Acton,
7 what were you doing at this time? Where were you?

8 A. I was in the room still.

9 Q. Okay. Could you hear the dogs barking when
10 you were in the room?

11 A. No, sir, that not that I remember.

12 Q. Did you hear the dogs barking again that first
13 encounter as you came up to the room?

14 A. Not after I had opened the door to make entry.

15 Q. None of you knew these dogs in advance, right?

16 A. No, sir.

17 Q. None of you appeared to ever be inside this
18 house before, right?

19 A. Correct.

20 Q. Let me show you 631. Do you recognize this as
21 a floor plan of the main house at Bridle Path?

22 A. Yes. Yes, sir, I do.

23 Q. And this over here on the south side would
24 have been the door that all five of you came in; is that
25 right?

1 A. Yes, sir.

2 Q. And you proceeded through clearing this area
3 and then turned and went down this hallway towards the
4 room where the body was?

5 A. Yes, sir.

6 Q. And as you went down you cleared this bedroom,
7 the laundry room, this bathroom, and then eventually the
8 last room was the master bedroom down here, right?

9 A. I did not clear those rooms, but they were
10 cleared, yes, sir.

11 Q. I think we got a pretty good description. You
12 were the point person. You were responsible for making
13 sure that nobody came out of these rooms while you all
14 were coming down the hallway, right?

15 A. Correct.

16 Q. And you had your weapon out and you were doing
17 that?

18 A. Yes, sir.

19 Q. And at that point the house is completely
20 dark, right?

21 A. Completely dark? Other than our flashlights
22 and some smaller lights, yes.

23 Q. Smaller what?

24 A. Lights.

25 Q. What lights?

1 A. There was a small light. I don't know where
2 it was coming from. In the front room up to the right
3 there and then there was a desk lamp light, kind of back
4 lighting the computer in the office.

5 Q. Was there a lamp on in the --

6 A. Like a back light behind the computer monitor.

7 Q. Part of the computer?

8 A. Possibly, yes, sir.

9 Q. So like a monitor was on?

10 A. Yes, sir.

11 Q. The screen was dark but the monitor was on?

12 A. Yes, sir.

13 Q. That was the only artificial light you saw
14 inside of the house?

15 A. Yes, sir.

16 Q. Okay. And you told us about going under the
17 ladder, stepping over the body. How did you avoid the
18 blood that was right here (indicating) at the doorway?

19 A. As carefully as I could. It was slow going.

20 Q. Okay. So you were trying to look where it was
21 with your flashlight?

22 A. With the flashlight and then trying to not hit
23 the ladder and make a step over.

24 MR. SEARS: Phil, I'm going to need the screen
25 up here in a minute but while we're doing that let me show

1 you a couple of other pictures here.

2 Go ahead.

3 Q. Let me just ask you a couple of questions
4 about -- couple more questions about the inside while
5 we're setting up this screen here. When you came down
6 this hallway as you were coming down, at that point you're
7 in the clearing the scene mode, right, that's a hundred
8 percent of your focus?

9 A. Yes, sir.

10 Q. You're not looking for evidence or blood or
11 biological material, you are just trying to clear the
12 scene, right?

13 A. Correct.

14 Q. And when you clear the scene at some point, I
15 assume, you go back out this hall more than once?

16 A. No, just the one time.

17 Q. And did you go back out the door that you came
18 in?

19 A. Yes, sir.

20 Q. Do you know anything about whether the doors
21 in the house that go to the outside, there's this one here
22 (indicating). This one here (indicating). This one here
23 (indicating) and this one here (indicating). Do you know
24 whether those doors were locked or unlocked when you got
25 there except for the door that you went in?

1 A. The only door that I really looked at other
2 than when we came in was the door to the office.

3 Q. The door to the office?

4 A. Yes, sir.

5 Q. And that's this door here (indicating)?

6 A. Yes, sir.

7 Q. Tell me what you did with that door?

8 A. I just looked and saw that there was a bolt
9 through the door.

10 Q. You could see the deadbolt?

11 A. I could see a bolt in the door. I don't know
12 whether it was the latch bolt or the deadbolt.

13 Q. Did the lock assembly for this door out of the
14 bedroom have both a door handle and a separate deadbolt?

15 A. I don't remember.

16 Q. You take a picture of it?

17 A. I believe I did, yes, sir.

18 Q. Okay. But it was your impression that the
19 door was locked; is that right?

20 A. Yes, sir.

21 Q. Could the door be locked from the inside?
22 Could a person do something and pull the door locked
23 behind them?

24 A. I don't remember the configuration of the
25 lock.

1 Q. Okay. Let's take a look -- Phil, if you could
2 help me set this up.

3 A. I hate it when that happens.

4 (Mr. Hammond enters the courtroom.)

5 MR. SEARS: Okay.

6 Q. If you want to step down and look at this, if
7 you can't see it from there, and I'll ask you a couple of
8 questions, and here we come now.

9 Okay. Let me show you 2284 in evidence again.
10 Okay. We've talked about -- you've talked about this
11 picture with Mr. Butner here and you said that you took
12 this picture in part to show what you thought was a bloody
13 palm print here on the rug, right?

14 A. Yes, sir.

15 Q. Okay. Is that the only picture that you took
16 of that palm print?

17 A. I don't believe so. I think I have one
18 specifically of it.

19 Q. Who's palm print is it?

20 A. I don't know.

21 Q. Is it a left or a right hand?

22 A. I don't know.

23 Q. Is it a palm print?

24 A. It appeared to be a palm print.

25 Q. Did you watch the police detectives cut this

1 piece of carpet out and save this palm print?

2 A. No, I did not.

3 Q. Okay. Did you see any other palm prints or
4 partial handprints any where else around Ms. Kennedy?

5 A. Not that I remember, no, sir.

6 Q. How about shoe prints? Did you see any bloody
7 shoe prints on this carpet?

8 A. Not that I remember, no, sir.

9 MR. SEARS: Okay. I'm done, Phil. Thank you.
10 I'm going to use the Elmo again.

11 Q. Okay. Let me show you 2343 in evidence. I
12 think that you told us before that -- as you're coming up
13 to the front of the complex where Mr. DeMocker's condo
14 was, this (indicating) is the archway that you drive into
15 and there's a courtyard in the center, right?

16 A. Yes, sir.

17 Q. And that courtyard has a series of garage
18 doors. We've seen pictures of the two on the left but
19 there's a pair of garage doors you can barely see on there
20 on the opposite side, correct?

21 A. Correct.

22 Q. So all of the garage doors for all of the
23 units in this particular building are open into this
24 courtyard, right?

25 A. Yeah. Yes, sir. That's how it looked.

1 Q. And you parked your vehicle across one of them
2 that you thought was Mr. DeMocker's garage door, right?

3 A. Correct.

4 Q. And then you took out your lawn chair and went
5 and sat in front of the front door that had the unit
6 number on it, right?

7 A. Correct.

8 Q. So you figured at that point, you got it
9 covered. Nobody can go in the garage door. Nobody can go
10 in the front door without getting by you, right?

11 A. More or less, yes.

12 Q. That didn't work so well?

13 A. No, sir.

14 Q. Okay. As it turns out you were one door off
15 and so the actual garage door, if you went inside this
16 (indicating) arch and turned right to the left, it's the
17 first one on the left, isn't it?

18 A. Correct.

19 Q. Okay. Now, you got there, you thought about 1
20 in the morning? Is that when you got to the scene?

21 A. I believe so, yes, sir.

22 Q. Okay. And it took you a couple of minutes to
23 figure out what you were doing, figure out where
24 everything was, and get your lawn chair out, right?

25 A. Yes, sir.

1 Q. And so what time do you think it was that you
2 began your observation there when you were sitting in the
3 lawn chair, was it 1:30?

4 A. Maybe 15 minutes after I got there.

5 Q. Were there any lights on in any of these units
6 upstairs here or anywhere in this building that you saw?

7 A. There were -- the majority of them were dark.
8 There was, I believe, a couple of lights on in 1405,
9 Mr. DeMocker's condo.

10 Q. That was the only one?

11 A. Yes, sir, that I remember.

12 Q. They were on when you got there?

13 A. Yes, sir.

14 Q. And your instructions were to go out there and
15 see if you could contact anybody?

16 A. No. Just see if anybody was there and then
17 let the detectives know.

18 Q. Did you ring the door bell or knock on the
19 door to see?

20 A. I did.

21 Q. There was nobody inside?

22 A. Nobody answered.

23 Q. Okay. But you think the lights were on when
24 you got there?

25 A. Yes, sir.

1 Q. And that -- did the lights stay on the whole
2 time that you were there?

3 A. Yes, sir.

4 Q. They didn't go off and on?

5 A. I never saw them turn off, no, sir.

6 Q. From where you were on the opposite side --
7 now, it's a little bit hard in this picture, but to get to
8 where you were, you walk around that walkway we saw around
9 the corner of the building and half way down the other
10 side, right?

11 A. Yes, sir.

12 Q. And that's where you were and that's why you
13 couldn't see into the courtyard area, correct?

14 A. Correct.

15 Q. Did you knock on the garage for any reason?

16 A. No, sir.

17 Q. Okay. Was there any obvious way to get that
18 garage door to go up from the outside if you didn't have
19 an opener?

20 A. I believe there was a key pad but I don't
21 remember.

22 Q. And you wouldn't of had the key pad code?

23 A. No, sir.

24 Q. So you could knock on the door -- actually,
25 the door bell was missing on that unit, wasn't it?

1 A. I don't remember.

2 Q. Okay. We can look at a picture here in just a
3 second. Let me show you 2353. See where the door bell
4 used to be?

5 A. Yes, sir.

6 Q. Okay. It wasn't there?

7 A. No, sir.

8 Q. That's the way that you saw it that night?

9 A. Yes, sir.

10 Q. So you had to knock on the door?

11 A. Yes, sir.

12 Q. Okay. And you did that and nobody answered?

13 A. Correct.

14 Q. Now you found out apparently that sometime
15 before you got that phone call, Ms. Girard got herself
16 inside that unit without you seeing her, right?

17 A. Yes, sir.

18 Q. Do you know what time that was?

19 A. When I was advised or when she was there?

20 Q. When she actually got in.

21 A. No, I do not know.

22 Q. Could she have been in there before you rolled
23 up?

24 A. Possibly, yes, sir.

25 Q. Okay. Could she have gotten in there while

1 you were around the other side and you just didn't see her
2 here?

3 A. Yes, sir.

4 Q. She could have driven through the archway and
5 you couldn't see that archway, right?

6 A. Correct.

7 Q. Pulled into the courtyard, opened the garage
8 door and pulled in, unless you heard the door opening, you
9 wouldn't of seen her, correct?

10 A. Correct.

11 Q. And you wouldn't of even seen her headlights
12 from when you were sitting?

13 A. Correct.

14 Q. And apparently the people at the sheriff's
15 department were a little upset that Mrs. Girard had gotten
16 inside that house when you were suppose to be watching it,
17 right?

18 A. Yes, sir.

19 Q. You heard a little bit about that?

20 A. I did.

21 Q. More than once, right?

22 A. Possibly.

23 Q. Okay. And so when you heard about it,

24 Ms. Girard apparently left without you knowing that she
25 got out of there and left and was coming back and that's

1 when she was contacted by you and was it Sergeant
2 Howard --

3 A. Yes, sir.

4 Q. -- who came up behind her, right?

5 A. Correct.

6 Q. And there was little discussion between you
7 and Sergeant Howard at the point, I would imagine, on what
8 had happened?

9 A. Yes, sir.

10 Q. You didn't tell him about the lawn chair?

11 A. Oh, he knew.

12 Q. Okay. Okay. Now --

13 A. It's not like I was sitting in the lawn chair
14 the whole time.

15 Q. I understand. You said that you got up and
16 walked around?

17 A. Correct.

18 Q. But just never were in the right place at the
19 right time to see anybody going in or out the unit?

20 A. Correct.

21 Q. Do you have any idea how long Ms. Girard was
22 upstairs in Mr. DeMocker's condo that night?

23 A. Not that I remember, no, sir.

24 MR. SEARS: You can turn that off, Phil, any
25 time. Too many pieces of paper here. I'm sorry.

1 Q. Let's go back and imagine, if you will, the
2 scene inside the room where the body was. Okay?

3 A. Yes, sir.

4 Q. Can you picture that in your mind here without
5 looking at photographs of it?

6 A. Yes, sir.

7 Q. It was a pretty remarkable event that night, I
8 imagine, right?

9 A. Yes, it was.

10 Q. And things are knocked over in the room, the
11 ladder appears to be out of place, the bookshelves are
12 knocked over, right?

13 A. Yes, sir.

14 Q. Look like a struggle, right?

15 A. Looked like a heck of a scene.

16 Q. Heck of a scene?

17 A. Yes, sir.

18 Q. What do you mean by that?

19 A. Thirteen years -- at that point 11 years, I
20 hadn't, you know, I had been on several, you know, bodies
21 but I hadn't seen one in that state before.

22 Q. It was a terrible, terrible thing to look at,
23 right?

24 A. Yes, sir, it was.

25 Q. And it looked like all hell had broken loose

1 in that room?

2 A. Yes, sir.

3 Q. Let's talk about the ladder a little bit. We
4 talked about the ladder out in the hall and you showed
5 Mr. Butner where you thought the ladder belonged. Where
6 it was clipped up so it would be able to be used to go up
7 in that loft, right?

8 A. Yes, sir.

9 Q. You don't know where the ladder was, though,
10 right before it landed where you saw it? You have no idea
11 where that ladder was?

12 A. No, sir.

13 Q. It could have been used somewhere else in that
14 room other than over in that corner where the clips are?
15 It could have been used just to get up into the loft some
16 other way?

17 A. It could have, yes, sir.

18 Q. It could have been out in the hallway?

19 A. May have, yes.

20 Q. Did it appear to you that things were pulled
21 away from the wall in that room?

22 A. Which wall, sir?

23 Q. Well, how about the wall directly opposite the
24 wall where the computer and desk were? Did things look
25 like they'd been pulled away from that wall? Do you

1 understand my question? It may not have been a good
2 question.

3 A. I do. I'm just trying to visualize it at this
4 point. You know, I really can't say if things had been
5 pulled away or not.

6 Q. Okay. You really didn't get a sense of what
7 was -- what had been going on in that room before all hell
8 broke loose?

9 A. No.

10 Q. Whether it was being painted or remodeled or
11 anything about that?

12 A. No, sir.

13 Q. Okay. After you finished the work that you
14 told us about in the room where the body was, you went
15 outside and you were part of a group that was clearing the
16 rest of the property, correct?

17 A. Yes, sir.

18 Q. And you went down into that little horse barn,
19 right?

20 A. Yes.

21 Q. And there was a storage room in there, right?

22 A. Correct.

23 Q. And you saw the bicycles hanging in there?

24 A. I believe so, yes.

25 Q. Did you take pictures of them?

1 A. I was not taking pictures of those at that
2 time.

3 Q. Did somebody else take pictures of them?

4 A. I do not know. If they did, then possibly,
5 yes.

6 Q. Tell us where they were?

7 A. The bicycles?

8 Q. Yes, sir.

9 A. If I remember right, they were on hooks into
10 the left of the doorway.

11 Q. Okay. This is sort of a one stall barn,
12 right?

13 A. Yeah. With a turnout, yes, sir.

14 Q. A little turnout in the back and then it had
15 like a tack room or little storage room --

16 A. Tack feed area, yes, sir.

17 Q. -- in the front.

18 Did that have a door to it?

19 A. Yes, sir.

20 Q. Okay. Were the bikes hanging on hooks or
21 hanging on the wall?

22 A. I believe they were on hooks.

23 Q. From the beams or --

24 A. Either from the beams or from the high side of
25 the wall.

1 Q. Do you remember how many they were?

2 A. No, sir.

3 Q. Do you remember anything about them?

4 A. No, sir.

5 Q. Did anybody else see them besides you?

6 A. I don't know.

7 Q. Okay. You were looking for people at that
8 point, correct?

9 A. Yes, sir.

10 Q. And you searched the garage. You told us
11 about that. Were there cars in the garage?

12 A. Yes, sir, there were.

13 Q. How many?

14 A. Two.

15 Q. There was a BMW, right?

16 A. It may have been, yes, sir. I wasn't paying
17 attention to the makes.

18 Q. And another passenger vehicle?

19 A. Yes, sir.

20 Q. And you looked in those and looked under them
21 quickly to see if there were people there?

22 A. Right.

23 Q. Didn't conduct any kind of a search?

24 A. No, sir.

25 Q. And you know how to search a vehicle?

1 A. Yes, sir.

2 Q. You've done that more than once?

3 A. Yes, I have.

4 Q. And speaking of searches -- going ahead -- was
5 it Sergeant Howard and you that searched Renee Girard's
6 vehicle?

7 A. Yes, sir.

8 Q. Tell me where the car seat was?

9 A. I believe it was in the back seat.

10 Q. On the driver or passenger's side?

11 A. That, I don't remember.

12 Q. Was it buckled in?

13 A. I don't remember.

14 Q. Remember what color it was?

15 A. No, sir.

16 Q. Was it a front facing or a rear facing car
17 seat?

18 A. I believe it was a front facing seat.

19 Q. And was there anything else in the -- in the
20 vehicle that you remember?

21 A. There was some motor oil in the trunk, along
22 with the tire. Really, I didn't write down an inventory
23 list of what I saw.

24 Q. What were you looking for?

25 A. I was told to look for any type of clothing,

1 anything that may have blood or biological evidence on it.

2 Q. Any weapons?

3 A. At that point, no.

4 Q. And did you find clothing?

5 A. I don't believe so, no, sir.

6 Q. And you didn't find anything with blood in it,
7 right?

8 A. Not that I saw, no, sir.

9 Q. And you took as much time as you needed to
10 search that vehicle, I assume, right?

11 A. Yes, sir.

12 Q. You went in the glove box and you went in the
13 trunk, right?

14 A. And under the seats, yes, sir.

15 Q. Okay. And found nothing that you thought was
16 of any interest. How about Sergeant Howard, did he find
17 anything?

18 A. No, sir.

19 Q. Did you divide the search up like I'll take
20 the back, you take the front, or I'll take this side?

21 A. To a degree, yeah. There was some overlap to
22 make sure that things were covered.

23 MR. SEARS: That's all of the questions that I
24 have. Thank you very much. Thank you, Deputy.

25 THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. BUTNER:

Q. Mr. Sears asked you if you took a picture of the door of the office area. Do you understand that question?

A. Yes, sir.

Q. Which door did you understand him to be talking about?

A. The door that leads to the exterior of the residence from the office.

Q. And so you think that you took a picture of that door?

A. I think I may have. I'm not certain on it, though.

Q. Okay. And when you took that picture of that door, what was the purpose of you taking that picture?

A. To get a view of the door handle and any bolt that was visible through the door jam in the frame.

Q. Did you take that picture from the inside of the office area towards the outside?

A. Yes, sir.

Q. And had you -- have you looked at that picture since you took the picture?

A. No, sir.

MR. BUTNER: Judge, it's going to take me a

1 couple of minutes to find that particular picture.

2 (Mr. Butner and Mr. Paupore confer off the record.)

3 MR. BUTNER: Let me see if I can cover
4 anything else.

5 Q. Did you notice anything of significance about
6 that particular door in terms of whether there was any
7 blood on the handle or anything like that?

8 A. No, sir, not that I remember.

9 Q. Did you examine the handle for that purpose?

10 A. At that point, no, sir.

11 Q. If you had not taken a picture of that door,
12 how did you examine the door handle?

13 A. Just visually.

14 Q. Do you recall approximately how many
15 photographs you did take, Deputy Joy?

16 A. May have been a couple dozen.

17 Q. And whose camera were you using when you took
18 these photos?

19 A. Deputy Taintor's.

20 Q. So they were all on Deputy Taintor's camera?

21 A. Yes, sir.

22 MR. BUTNER: Could we have a brief recess,
23 Judge? We're trying to find the photo and we're not able
24 to do so.

25 THE COURT: Well, before we do that, any other

1 jury questions that we have? You need to pass them to the
2 Bailiff. Maybe we can use the recess to go over those
3 things too.

4 Let's take a 10, 15 minute recess. Remember
5 the admonition, please.

6 You can step down in the meantime.

7 (The jurors exited the courtroom.)

8 (Whereupon, a break was taken.)

9 THE COURT: Record reflects -- thank you. The
10 record reflects -- that stunned me -- record reflects that
11 both parties are present, all three counsel for the
12 Defendant, and Defendant is present.

13 I allowed the lawyers to go over the jury
14 questions that we received so far. We're obviously not
15 done because Mr. Butner still has questions, but any
16 objection to the questions that were proposed other than
17 there's a duplicate in one?

18 Mr. Sears.

19 MR. SEARS: We have no objections with that
20 caveat about the duplicate.

21 THE COURT: Try and figure out which one --
22 which two you're talking about. Mr. Butner?

23 MR. BUTNER: There are two the same, Judge,
24 and we don't have any objection to all of them and, of
25 course, let's not ask the same question twice.

1 THE COURT: Don't repeat myself. I will
2 sustain that objection.

3 One of the deputies coming up to testify is
4 Deputy Boan. Apparently Lisa, who is covering Court
5 Reporting for this afternoon for us -- she's Judge
6 Mackey's Court Reporter -- she has a son who is friends
7 with Deputy Boan's son and so the families know each
8 other.

9 I presume -- well, I won't presume. Do you
10 have any objection to Lisa continuing to report based on
11 the fact that she is friends with the witness.

12 MR. BUTNER: No, I have no objection to that.

13 MR. HAMMOND: Is it too late to end the
14 friendship?

15 THE COURT: Probably not, but I could also get
16 Roxanne in to report Deputy Boan. Do you have any
17 objections, Mr. Sears?

18 MR. SEARS: No, Your Honor.

19 THE COURT: Thank you. Being the competent,
20 professional she is, she wanted me to let you know so you
21 could voice any objections.

22 All ready to get rolling again?

23 THE BAILIFF: Counsel, ready?

24 MR. BUTNER: Ready, Your Honor.

25 THE COURT: I'll go cover up my nice shirt.

1 (The jurors entered the courtroom.)

2 THE COURT: Record reflects the jury is
3 present, the Defendant, his counsel, and prosecutors, and
4 Deputy Joy is still on the stand.

5 You may proceed.

6 MR. BUTNER: Thank you, Your Honor.

7

8 REDIRECT EXAMINATION (Resumed)

9 BY MR. BUTNER:

10 Q. Okay. Deputy Joy, during the break we were
11 looking for photographs and you think that you actually
12 did take a photograph of that door that exits the office
13 going to the outside of the residence; is that correct?

14 A. I think I may, yes, sir.

15 Q. And you were using Deputy Taintor's camera; is
16 that right?

17 A. Correct.

18 Q. Was that a department issued camera?

19 A. No, sir.

20 Q. To your knowledge had there been any
21 difficulties with that camera before?

22 A. With flashing, yes, sir.

23 Q. You indicated to me -- I think the word was
24 that you said there had been issues with Deputy Taintor's
25 camera before?

1 A. Yes, sir.

2 Q. All right. So what were those issues then
3 basically?

4 A. Just the flash not operating consistently.

5 Q. And so what was the result when the flash
6 didn't operate?

7 A. Picture wouldn't turn out.

8 Q. Okay. In regard to the picture that you took
9 of that door, is that the only door that you looked at in
10 the residence to see if it was opened -- rather to see if
11 it was locked or unlocked?

12 A. Yes, sir.

13 Q. When you looked at the door could you tell if
14 it was a deadbolt that was turned and locking the door or
15 whether it was part of the locking mechanism?

16 A. I couldn't tell if it was the deadbolt or just
17 the latch bolt itself.

18 Q. But you saw something brass back in there
19 between the door and the door frame?

20 A. Yes, sir.

21 Q. And that's what you assumed was the locking
22 mechanism?

23 A. Yes, sir.

24 Q. And did you ever actually go over and check
25 that door?

1 A. Physically, no.

2 Q. Were you gloved when you were in the crime
3 scene?

4 A. Yes, I was.

5 Q. What kind of gloves were you wearing?

6 A. Black leather Hatch Spectra lined patrol
7 gloves.

8 Q. And you were wearing those for what reason?

9 A. I usually wear them when I deploy the rifle,
10 just protection for my hands and --

11 Q. Part of the standard kind of protocol that you
12 follow when you're doing a protective sweep with your
13 rifle?

14 A. Yes, sir.

15 Q. And did you touch any of the door handles in
16 the crime scene aside from the one that you entered
17 through?

18 A. The only other door handle that I may have
19 touched would have been the exterior door to the garage.

20 Q. And for what reason may you have touched that?

21 A. To open it and get access into the garage.

22 Q. Had you touched any bloody surfaces before
23 going to that door?

24 A. Not that I'm aware of, no, sir.

25 Q. Did you touch the body, sir?

1 A. No, sir.

2 Q. Did you touch the floor around the body?

3 A. With my boots.

4 Q. Speaking of your boots, did you examine your
5 boots at any point in time to see if you had actually
6 tracked through blood?

7 A. Yes, I did.

8 Q. When was that?

9 A. After the facts. After I had been in the room
10 and then out again.

11 Q. And what did you find?

12 A. I didn't notice any blood on my boots.

13 Q. And that's what you were looking at them for?

14 A. Yes, sir.

15 Q. Did you see any bloody footprints going down
16 the hallway away from the office area where the body was
17 located?

18 A. Not that I remember, no, sir.

19 Q. If someone else had actually gone over and
20 checked that office door handle to see if it was locked or
21 unlocked by attempting to manipulate the mechanism, would
22 you defer to their judgment in terms of whether that door
23 was locked or unlocked?

24 A. Yes, I would.

25 Q. In addition to blood splatter located right

1 around the body of the victim in this case and the blood
2 splatter that went out into the hall, did you see any
3 blood splatter that went beyond the book cases?

4 A. No, I did not.

5 Q. Were you able to tell what position the book
6 cases were in at the time that they received the blood
7 splatter?

8 A. Yes, sir.

9 Q. How were you able to do that?

10 A. From the direction that the splatter ran down
11 the side of the bookcase.

12 Q. Did you see any instances where the blood
13 splatter had run down and then changed direction?

14 A. Not that I remember, no, sir.

15 Q. If you had seen instances of that, what would
16 that have indicated to you?

17 MR. SEARS: Foundation 701, 702.

18 THE COURT: Overruled.

19 You may answer.

20 THE WITNESS: That the blood splatter on the
21 bookcases would have been wet, and then as it ran down the
22 bookcases afterwards, changing the direction of the flow.

23 MR. BUTNER:

24 Q. It would have indicated that the bookcase had
25 been moved after the blood splatter hit the bookcase?

1 MR. SEARS: Leading.

2 THE COURT: Sustained.

3 THE WITNESS: Yes, sir.

4 MR. BUTNER:

5 Q. To clarify your answer to me, what would that
6 blood splatter indicate to you if it ran down as you
7 stated and then changed direction?

8 THE WITNESS: That --

9 MR. SEARS: Foundation and Voir Dire, Your
10 Honor.

11 THE COURT: Overruled.

12 THE WITNESS: That the blood splatter hit the
13 bookcase, was wet, had traveled for some time, and then
14 the book case was moved to another position changing the
15 flow of the blood splatter.

16 MR. BUTNER: No further questions.

17 THE COURT: Other questions from the jury?
18 Was that an affirmative? Okay. Apparently not. We do
19 have a number of questions from the jury.

20 Deputy Joy, with flashlight and gun in hand,
21 how did you enter the office without stepping on blood by
22 the door and then stepping under the ladder over the body,
23 in the dark without disturbing any evidence?

24 THE WITNESS: The flashlight that I had, was
25 operating at the time, was mounted to the front end of my

1 rile so it was all in one unit and portable that way.

2 THE COURT: Regarding photos -- and if you
3 need to look at them, let us know -- what is above Carol's
4 head next to the desk trim, parenthetically it says, it
5 looks like a cylinder of some kind with a red cap.

6 THE WITNESS: That would have been a bottle of
7 Pet Oops Cleaner.

8 THE COURT: Had any of the victim's family
9 members arrived at the crime scene when you were present
10 at Bridle Path?

11 THE WITNESS: No, sir.

12 THE COURT: Do you know if the windows in the
13 office were opened or closed?

14 THE WITNESS: I do not know.

15 THE COURT: Looked or unlocked?

16 THE WITNESS: I do not know.

17 THE COURT: Question, how many homicides have
18 you been involved in in investigations?

19 THE WITNESS: Five or six.

20 THE COURT: Is it normal procedure for
21 officers securing the scene to take photos rather than
22 waiting for CI?

23 THE WITNESS: Initially, yes. We'll take
24 photographs just to show what we walk into before anybody
25 else such as medical or anybody has been on the scene.

1 THE COURT: I think that you answered this,
2 did you ever wear Latex gloves while you were there?

3 THE WITNESS: Latex gloves, no, just my
4 leather ones.

5 THE COURT: I think this is referring to
6 gloves generally. Did you keep them on the entire time
7 that you were there?

8 THE WITNESS: Yes, I did.

9 THE COURT: Was there any blood splatter on
10 the ladder?

11 THE WITNESS: I do not remember seeing any
12 splatter on the ladder.

13 THE COURT: Did you notice any blood on the
14 victim?

15 THE WITNESS: There was quite a large amount
16 of blood on the victim, yes.

17 THE COURT: On the victim's hands?

18 THE WITNESS: I did not look specifically at
19 her hands, no.

20 THE COURT: Did the dogs ever try to enter the
21 office?

22 THE WITNESS: Not while I was in there. I
23 don't remember the dogs coming back in.

24 THE COURT: What was your responsibility in
25 standing out in front of the DeMocker residence?

1 THE WITNESS: Just to secure it, make sure
2 nobody was coming or going, and if there was, to let the
3 CI, Criminal Investigations Detective know.

4 THE COURT: When did Sergeant Howard arrive at
5 Alpine Meadows?

6 THE WITNESS: That would have been just after
7 4 o'clock at the same time that I spoke with Ms. Girard.

8 THE COURT: Did you know the reason why Renee
9 Girard was at the DeMocker home?

10 THE WITNESS: No, sir.

11 THE COURT: Could the ladder reach the loft at
12 an angle or did -- I think this means, did it need to be
13 straight up and down?

14 THE WITNESS: I believe that it would have to
15 be in some sort of an angle from the ground up to the open
16 way of the loft.

17 THE COURT: Were there a number of feet on the
18 ladder to keep it from slipping from its position up
19 against the loft?

20 THE WITNESS: I do not recall.

21 THE COURT: Those are the questions by the
22 jury. Any other questions from the jurors? I don't see
23 any. I'll turn those over to the Clerk.

24 Follow-up questions to those jury questions,
25 Mr. Butner?

1 MR. BUTNER: I don't have any, Judge. Thank
2 you.

3 THE COURT: Mr. Sears.

4 MR. SEARS: Your Honor, I have a matter that
5 we need to take up in chambers before we finish with this
6 witness.

7 THE COURT: All right. Take a stretch. You
8 can step down, in the meantime, if you want to sit
9 elsewhere. If you're comfortable where you, you can stay
10 there. Don't make any statements while we're out of the
11 room. I need the Court Reporter and the Clerk and the
12 lawyers.

13 (Whereupon, the following proceedings
14 were held in chambers with Mr. Butner,
15 Mr. Paupore, Mr. Sears, Mr. Hammond and
16 Ms. Chapman:)

17 THE COURT: Show us outside the presence of
18 the jury in chambers for a side-bar. All three lawyers
19 for the defense present. Both lawyers for the prosecution
20 present. Court reporter and Clerk and Judge.

21 You waive the presence of Mr. DeMocker?

22 MR. SEARS: I do, Your Honor.

23 THE COURT: Mr. Sears.

24 MR. SEARS: Your Honor, I renew my objections
25 to the part of Deputy Joy's testimony on redirect in which

1 he was talking about the blood splatter he saw on the side
2 of the bookshelf and his interpretation of that, that it
3 meant that the bookshelf had moved and that the blood had
4 dried.

5 We had litigated this matter pretty
6 extensively back in January -- January 14th of this year,
7 in a minute entry with regard to similar testimony from
8 Detective McDormett in this case you said quote, with
9 regard to Detective McDormett, the Court finds that he is
10 not an expert with regard to blood splatter or with regard
11 to reconstruction -- of reconstruction. Description of
12 what were observed are admissible under 701.

13 I didn't hear all of the questions. I think
14 there is probably further objections that it was beyond
15 the scope of cross-examination. It was a new matter on
16 redirect but --

17 THE COURT: If you had made that, I probably
18 would have sustained it.

19 MR. SEARS: Unfortunately I was looking
20 quickly to see what this was about, Your Honor. I didn't
21 hear all of the evidence, but I don't think that there is
22 any suggestion that Deputy Joy has anymore expertise --

23 THE COURT: Hang on.

24 (The Bailiff enters chambers.)

25 MR. SEARS: Expertise in blood splatter --

1 THE COURT: Go ahead.

2 MR. SEARS: -- than Detective McDormett had or
3 any other police witness. I think that that testimony is
4 improper. It's a little difficult now to cure that by
5 striking the testimony, but that would be my request.

6 If you're not inclined to do that, I would ask
7 for permission to reopen with Deputy Joy on that topic and
8 talk to him about his lack of qualifications and his lack
9 of experience, and I have another photograph that I wanted
10 to show him of a blood drop on the door frame which
11 changes direction and ask him if he thinks the door frame
12 was moved.

13 THE COURT: Mr. Butner.

14 MR. BUTNER: Deputy Joy's testimony about
15 blood splatter just has to do with the fact of gravity on
16 a liquid and the fact that if you move the surface upon
17 which the liquid is flowing down, then it will change
18 direction due to the force of gravity. He doesn't have to
19 be an expert to testify about that. That's common
20 experience for most human beings, I think, and so I don't
21 think that he needs to be an expert on that to testify
22 about that.

23 MR. SEARS: And I will tell you that from my
24 knowledge of this area, questions about the direction
25 which blood flows, has great to do with technical

1 information about the quantity of blood, the temperature,
2 the humidity, the surface to which it's adhering. It is
3 not simply a matter of gravity. If it were, then we would
4 have to understand how the blood changed direction on the
5 door frame. I have that picture. It's a crime scene
6 photograph.

7 THE COURT: What's your position on reopening
8 on that particular photograph?

9 MR. BUTNER: I understand -- well, would I
10 want to reopen? I don't have any objection to the
11 reopening, Judge. And if he wants --

12 THE COURT: Seems fair given that I thought it
13 was a new topic that was opened. So I'll let you recross
14 as it were.

15 MR. BUTNER: Yeah, recross.

16 MR. SEARS: It will take me a minute to locate
17 that exhibit. I have it but I need to get an exhibit
18 number and get it marked.

19 THE COURT: Okay. We got a jury question in
20 the meantime. We'll probably get more as long as we are
21 back here. Question, why wasn't Deputy Boan on the crime
22 log? Don't know if he was or wasn't.

23 Why were you sent to watch DeMocker residence?
24 Didn't we cover that?

25 And who moved checkbook. Those are the --

1 MR. SEARS: Who moved the checkbook?

2 THE COURT: If you want to see them.

3 MR. SEARS: I thought one of the jury
4 questions the last round was why were you sent to the
5 DeMocker residence.

6 THE COURT: I think it was too.

7 MR. PAUPORE: It was asked and answered.

8 THE COURT: I thought it was covered. I'm
9 disinclined to ask it. It's just repeating what the
10 previous question was.

11 MR. SEARS: I'm a little surprised at his
12 answer based on our defense interview and all of the other
13 circumstances. I thought that the answer would have been
14 to secure the place while they were getting a search
15 warrant not to chat up with the folks that were there.

16 THE COURT: Does anybody know if Boan was on
17 the crime log or not?

18 MR. SEARS: I think the answer -- that might
19 be a technical one. I don't think he technically came
20 into the scene. I think the clipboard was being
21 maintained at the door.

22 MR. PAUPORE: Actually, there was a volunteer
23 that was taking down names.

24 MR. SEARS: There's another log that was being
25 run simultaneously by a VIP that's different.

1 MR. BUTNER: Also at one point Boan is on the
2 crime log because I looked at that and I wondered why is
3 Boan up here at the top or something, you know, but he
4 wasn't in the scene at the beginning. He was way out
5 there, just like Mr. Sears said, and then later on I
6 believe he's on the crime log but it's way down.

7 MR. SEARS: After he let Mr. Knapp go.

8 THE COURT: Do you want to pull out the
9 exhibit and give it to the witness?

10 MR. BUTNER: We can do that and -- but Deputy
11 Boan is the next witness too so --

12 THE COURT: Do you want the question asked or
13 not asked of this witness?

14 MR. SEARS: I don't -- I think that it would
15 be pointless to ask him.

16 THE COURT: Like I said --

17 MR. BUTNER: Well, no, he kind of knows. He
18 kind of knows about the -- getting the crime log and so
19 forth so maybe he --

20 MR. SEARS: Okay. Maybe you want to ask him
21 about the VIP log.

22 MR. BUTNER: It's all in the same --

23 MS. CHAPMAN: It's all in the same exhibit.
24 It's three pages and the last page is shorter.

25 MR. SEARS: First page actually.

1 THE COURT: Do you know the number anybody?

2 MR. BUTNER: 1613.

3 MR. SEARS: It is. You're right.

4 THE COURT: Thank you.

5 MR. BUTNER: Because of my dyslexia I
6 remembered it because I first called it 1631.

7 THE COURT: That's right. Okay.

8 MR. BUTNER: I hate that.

9 THE COURT: Would -- while you're getting the
10 picture, would you get -- while you are looking for that,
11 would you get 1613 out and --

12 MR. BUTNER: Yes, I will.

13 THE COURT: If you have it, would you make
14 sure that it's out so --

15 MR. BUTNER: By the way, she's doing a great
16 job.

17 Thank you so much, Rachel. I really
18 appreciate it.

19 THE COURT: How about the other questions?
20 Who moved the checkbook?

21 MR. SEARS: Who said the checkbook was moved?

22 MR. BUTNER: I don't think it was but, you
23 know, they may have discerned that it was moved in the
24 photo. I don't think it was.

25 MR. SEARS: It's where -- the one photo from

1 the door looking across. If you don't understand -- the
2 crime scene is confusing when you use the photo looking
3 straight down at it.

4 THE COURT: Do you want that asked or does it
5 assume facts not in evidence?

6 MR. SEARS: That's a problem.

7 THE COURT: You want it not asked?

8 MR. SEARS: Yeah.

9 MR. BUTNER: That's fine.

10 THE COURT: I'll not ask it.

11 MR. SEARS: You could ask the question a
12 different way. I wouldn't object to saying was the
13 checkbook moved. Did anybody move any of the objects and
14 we could all at that point point out that they didn't
15 collect the bottle, that they were asking about, the Pet
16 Oops.

17 MR. BUTNER: You shouldn't point that out.

18 MR. SEARS: Yes, we should. It's a search for
19 the truth, Joe.

20 MR. BUTNER: That's true. Not a search for
21 doggy oops remover.

22 MR. SEARS: Covered in the victim's blood.

23 THE COURT: Newest question is, did you hear
24 the phone ring at any time that you were at the Bridle
25 Path residence?

1 MR. BUTNER: Oh, that is a --

2 MR. PAUPORE: -- good question.

3 MR. BUTNER: That is a good one. That's
4 interesting. No objection.

5 MR. SEARS: People were called.

6 MS. CHAPMAN: Uh-huh.

7 MR. SEARS: Interesting.

8 THE COURT REPORTER: Ms. Chapman, excuse me I
9 didn't hear you.

10 MS. CHAPMAN: (Waiving).

11 THE COURT: It's not important. So in terms
12 of process do you want to redo the recross first?

13 MR. SEARS: Yeah. It will just take me a
14 couple of minutes.

15 THE COURT: Redirect?

16 MR. BUTNER: Yeah.

17 MR. SEARS: I have our copy of the photo.
18 Just take us a moment to determine whether it's been
19 marked already or not and have it marked again.

20 THE COURT: Okay.

21 MR. SEARS: I'll show it to you. It's one of
22 the photos -- it may have well been one of the photos of
23 the door jam. I think it's another one of the ones
24 admitted.

25 MR. BUTNER: I think you're right.

1 THE COURT: My view was it was 701 type of
2 testimony descriptive as opposed to -- but maybe I should
3 of cut it off at that point but unringing the bell is
4 ineffective at this point. I think that I'll let you do
5 the recross instead of as a way of dealing with it.

6 MR. SEARS: Thank you.

7 (Whereupon, the proceedings in chambers
8 were concluded and proceedings were
9 resumed in open court.)

10 THE COURT: I told you at the beginning of the
11 process that usually the examination ends with the
12 questions that are asked by the jury after there's been an
13 opportunity for direct and cross and redirect and that
14 usually ends the examination, but I've decided in the
15 interest of fairness to allow recross and then possibly
16 redirect and then I have a couple of other questions for
17 the witness that came from the jury.

18 So, Mr. Sears.

19 MR. SEARS: Thank you.

20

21 RECROSS-EXAMINATION

22 BY MR. SEARS:

23 Q. Deputy, let me just get back to you. Let me
24 show you 226 -- I'm sorry. 2286 in evidence and that has
25 previously been identified as a picture taken from inside

1 the room where the body was found looking out at a door
2 frame?

3 Can you see that?

4 A. Yes, sir.

5 Q. Let me get this oriented. I don't want to
6 have this upside down.

7 JUROR: No, sir, you have it right.

8 MR. SEARS: May I approach the witness?

9 THE COURT: You may.

10 MR. SEARS:

11 Q. Show me which is up and which is down in this
12 photo.

13 A. It would be -- up this way (indicating).

14 Q. Okay. This is up (indicating)?

15 A. Yes, sir.

16 Q. Okay. And you were talking about some blood
17 that you saw on the side of a bookshelf that appeared to
18 you to change direction, correct?

19 A. Correct.

20 Q. Let me show you this door frame and ask you if
21 you see a blood drop here (indicating) that has run and
22 changed direction? Do you see that (indicating)?

23 A. I can see what you're pointing at, yes, sir.

24 Q. And that's what it appears to be, right?

25 A. It appears to me to be two different drops.

1 Q. Can you be sure?

2 A. Looking at that from the way that it's
3 coagulated at the bottom of the long one to the top down
4 and the way that it coagulated from the bottom from the
5 other one where you're saying it's changed direction, it
6 looks to me to be two drops.

7 Q. You absolutely certain of that?

8 A. Certain? Absolutely a hundred percent? No,
9 sir.

10 Q. Okay. Let me show you -- it's a little bit
11 difficult -- might be a function of the Elmo. Take a look
12 at 2286 itself and tell me if that still appears to you to
13 be two drops or one connected drop?

14 A. It does appear that they are connected.

15 Q. Okay. So what you saw as a separation here is
16 just a function of projecting it up here; is that right?

17 A. Yes, sir.

18 Q. Okay. Now, let's -- looking at 2286. I'm
19 going to ask for permission in a minute to pass this
20 around so the jury can see it -- that would appear to be a
21 blood drop that flows in one direction and then stops and
22 changes direction slightly, correct?

23 A. Yes, sir.

24 Q. And you would agree with me that unlike the
25 bookcase, which we know was knocked over, the door jam

1 didn't move in all likelihood, correct?

2 A. Correct.

3 Q. So may there be other factors that you're just
4 not aware of that would cause a blood drop to change
5 direction as it flows and dries?

6 A. Yes, sir.

7 Q. You're by no means an expert in blood splatter
8 analysis or interpretation, correct?

9 A. Correct.

10 Q. You've had no special training?

11 A. Special training, no, sir.

12 Q. And you would not know anything about the
13 factors, like temperature, viscosity of the blood,
14 quantity of the blood, or any of the other circumstances
15 that might account for this change in direction on the
16 door jam; is that right?

17 A. Correct.

18 MR. SEARS: Your Honor, may I take a moment
19 and publish 2286 to the jury? We just can't do it on the
20 Elmo.

21 THE COURT: You may.

22 MR. SEARS: And you can turn the Elmo off.

23 THE COURT: Do you have the other exhibit,
24 Mr. Butner?

25 MR. BUTNER: Should I do that now?

1 THE COURT: Yeah.

2 MR. BUTNER: I don't know if he's done. You
3 want me to approach?

4 THE COURT: If you could.

5 MR. BUTNER: Certainly.

6 THE COURT: The exhibit is still being passed.
7 Mr. Sears, did you have additional questions?

8 MR. SEARS: No, Your Honor.

9 THE COURT: The exhibit has made it's way
10 around and the Bailiff is directed to return it to the
11 Clerk.

12 Mr. Butner, did you have redirect concerning
13 this issue?

14 MR. BUTNER: Is the photograph back?

15 THE COURT: Yes.

16 MR. BUTNER: Could I have it, please?
17 Thank you. Thank you, sir.

18

19 REDIRECT EXAMINATION (Further)

20 BY MR. BUTNER:

21 Q. Let me show you what is -- I believe it's
22 admitted into evidence already, 2286.

23 THE COURT: It is.

24 MR. BUTNER: May I, Judge?

25 THE COURT: Yes.

1 MR. BUTNER:

2 Q. Okay. Looking carefully at that photo --
3 oops. I put it to you upside down, didn't I? Looking
4 carefully at that photograph, are there two separate bulbs
5 on those drops of blood there?

6 A. Yes, there are.

7 Q. What does that indicate to you?

8 A. That, you know, one section of it has a higher
9 quantity of blood than the other.

10 MR. BUTNER: Okay. And thank you, sir.

11 Judge, could I have that exhibit? Right.

12 Thank you. I might know how to operate this by the end of
13 this trial.

14 THE COURT: Did you want me to ask the jury
15 question that pertains to this issue?

16 MR. BUTNER: Oh, yes, Judge.

17 THE COURT: Okay. There was a question from a
18 juror about whether Deputy Boan -- actually, it says, why
19 wasn't Deputy Boan on the crime log, and so in order to
20 address this Mr. Butner has Exhibit 1613.

21 MR. BUTNER: That's correct, Your Honor.

22 THE COURT: You may proceed.

23 MR. BUTNER: Thank you.

24 Q. I'm going to put 1613 on the Elmo again.

25 Deputy Joy, do you know why Deputy Boan was not on the

1 crime scene log?

2 A. Because at that point he had not gone into the
3 scene. He had not crossed the threshold of the driveway.

4 Q. And so he had stayed right outside of the
5 crime scene just outside of the driveway?

6 A. That's correct.

7 Q. And at some point in time a little later --
8 actually, I should say a little more -- a little earlier
9 in the morning did Deputy Boan go into the crime scene and
10 exit the crime scene?

11 A. Yes, he did.

12 Q. Do you have the laser pointer?

13 A. I do.

14 Q. Would you point to the time that he went into
15 the crime scene and exited it?

16 A. He entered the scene at 0104 hours and exited
17 at 0112 hours.

18 Q. And it appears as if he also accompanied the
19 person right below there?

20 A. Yes, sir.

21 Q. James Knapp?

22 A. Correct.

23 Q. Same times into the scene and out?

24 A. Yes, sir.

25 MR. BUTNER: I don't have any further

1 questions on that, Your Honor.

2 THE COURT: So for the Court Reporter's
3 benefit Boan is spelled B-o-a-n?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Thank you. There were
6 a couple of other questions from the jury, if you were
7 done, Mr. Butner.

8 MR. BUTNER: I am, Your Honor.

9 THE COURT: Do you recall a checkbook in the
10 area where the body was?

11 THE WITNESS: That was depicted in one of the
12 pictures that I had taken from inside the scene and it was
13 just to the right of her body, yes, sir.

14 THE COURT: And the question is, was the
15 checkbook moved?

16 THE WITNESS: Not by anybody that was there
17 when I was there.

18 THE COURT: Question, did you hear the phone
19 ring at any time that you were in the Bridle Path home?

20 THE WITNESS: No, sir.

21 THE COURT: Okay. Follow-up questions to
22 those latter questions that I just asked, Mr. Butner?

23 MR. BUTNER: I have no further questions at
24 this time on that subject, Your Honor.

25 THE COURT: Mr. Sears.

1 MR. SEARS: I do.

2

3 RECROSS EXAMINATION (Further)

4 BY MR. SEARS:

5 Q. On the question of the phone ringing, you were
6 inside the house as you said sometime between 9:30 and
7 9:40, you estimated, by the time you arrived on scene at
8 9:17, and made a plan, right?

9 A. Yes.

10 Q. You got inside some time after 9:30?

11 A. I believe so yes, sir.

12 Q. And how long were you inside then until you
13 left to go and do the sweep of the out buildings?

14 A. I would guess 20 minutes maybe.

15 Q. You were only in the house 20 minutes?

16 A. 20 maybe 30 but I wouldn't go much further
17 than that though.

18 Q. And did you go back inside of the house before
19 you cleared the scene?

20 A. Into the house, no, sir.

21 Q. Okay. You saw -- we've seen now pictures that
22 you took of this cordless phone on the phone near Carol's
23 body. Did you see an emptied base unit for that cordless
24 phone in that room?

25 A. I don't remember seeing that, no, sir.

1 Q. Did you see any other phones, cell phones,
2 cordless phones, landline phones in the house other than
3 that one cordless phone?

4 A. In the entire house?

5 Q. Yes, sir.

6 A. I believe there was -- there may have been one
7 in the kitchen.

8 Q. What kind of phone?

9 A. I believe it may have been another cordless
10 phone. I'm not really sure.

11 Q. And I understand you're saying in the period
12 of time, which apparently wasn't all that long you were
13 inside the house, you never heard any of the phones in the
14 house ring?

15 A. I don't remember hearing the phones, no, sir.

16 Q. Did you see anyone look at the phone that was
17 on the floor near the body, turn it over, pick it up, do
18 anything with it?

19 A. No, sir.

20 Q. It was just left in place?

21 A. It was left there, yes, sir.

22 Q. For detectives and crime scene people?

23 A. Yeah. It was not part of my duties at that
24 time to move anything.

25 THE SEARS: Thank you.

1 I don't have any other questions. Thank you,
2 Your Honor.

3 THE COURT: Mr. Butner, does that raise any
4 additional questions by you?

5 MR. BUTNER: It does not, Your Honor. Thank
6 you.

7 THE COURT: Members of the Jury, before Deputy
8 Joy leaves the stand, any further questions?

9 Don't see anybody responding affirmatively.
10 So may Deputy Joy be excused? Do you want him subject to
11 recall, Mr. Butner?

12 MR. BUTNER: He may be excused by the State,
13 Judge.

14 MR. SEARS: We may want him recalled, Your
15 Honor.

16 THE COURT: I think you're familiar with the
17 rule excluding witnesses, and it's possible that you could
18 be recalled as a witness, which means that you're still
19 under the rule excluding witnesses. You can't remain in
20 the courtroom nor can you discuss the case with anyone
21 else other than the lawyers and then only when the lawyers
22 and you are present not in front of any other witnesses.

23 Do you understand?

24 THE WITNESS: Yes, I do.

25 THE COURT: All right. But you may step down

1 and you're excused. If the lawyers are going to call you
2 back, they'll have to make arrangements ahead of time with
3 you.

4 THE WITNESS: Okay. Thank you.

5 THE COURT: Next witness.

6 MR. BUTNER: I would call Deputy Mark Boan to
7 the stand.

8 MR. BUTNER: B-o-a-n.

9 THE COURT: Did that other exhibit come back?

10 MR. BUTNER: Oh, These are mine. I put them
11 back over here. I was coming to get it again.

12

13 MARK BOAN,
14 called as a witness, having been sworn, testified as
15 follows:

16 THE COURT: We just learned it but would you
17 spell both your first and last name for the court
18 reporter, please.

19 THE WITNESS: Mark Boan, M-a-r-k B-o-a-n.

20 THE COURT: Thank you.

21 Mr. Butner.

22 MR. BUTNER: Thank you.

23

24

25

1 DIRECT EXAMINATION

2 BY MR. BUTNER:

3 Q. Deputy Boan, what is your occupation, sir?

4 A. I'm a patrol deputy with the Yavapai County
5 Sheriff's Office.6 Q. And how long have you been a patrol deputy
7 with the Yavapai County Sheriff's Office?

8 A. Ten years.

9 Q. And have you had special training or education
10 to prepare yourself for your occupation as a patrol
11 deputy?12 A. I attended the police academy called the
13 Northern Arizona Regional Training Academy in the Fall of
14 1999.

15 Q. Fall of 19 --

16 A. '99.

17 Q. -- '99. All right. And then have you been
18 performing duties with Yavapai County Sheriff's Office
19 ever since?

20 A. Yes.

21 Q. You want to move that mic back from you so
22 that you don't have to bend forward.

23 A. Lean forward all the time. Sorry.

24 THE BAILIFF: The chair moves.

25 THE WITNESS: Okay.

1 MR. BUTNER: That too. Right.

2 Q. Okay. Were you performing your duties as a
3 Yavapai County Sheriff's Office Patrol Deputy on the
4 evening of July the 2nd of 2008?

5 A. Yes.

6 Q. And what shift were you working that
7 particular day?

8 A. The swing shift.

9 Q. And swing shift for you was what hours at that
10 time?

11 A. 4 o'clock in the afternoon until 2 in the
12 morning.

13 Q. And during your shift on that particular date
14 did you have occasion to be called to or dispatched to a
15 location at 7485 Bridle Path out Williamson Valley Road?

16 A. Yes.

17 Q. Would you tell us how that came to be?

18 A. How I received the call?

19 Q. Sure.

20 A. Deputy Taintor called me. I was sitting in
21 the patrol office in the Prescott Sheriff's Office and he
22 called to the patrol room and asked us -- asked me to
23 respond out there to assist him.

24 Q. Did he call you on his cell phone?

25 A. How he called? I'm not sure how he called me.

1 I believe it was on his cell phone, but he called directly
2 to the patrol room.

3 Q. Okay. And did you respond to that location
4 then?

5 A. Yes.

6 Q. When you got out there, who else was on that
7 particular scene?

8 A. Deputy Taintor and Sergeant Acton was there.

9 Q. And you arrived and did any other deputies
10 arrive at the scene?

11 A. Yes. Sergeant Howard arrived with me at the
12 same time.

13 Q. Okay. And did you encounter any other deputies
14 at that scene after you had gotten there and Sergeant
15 Howard had gotten there?

16 A. Yes.

17 Q. Who else?

18 A. Deputy Joy and Deputy Schilling.

19 Q. And so you had five deputies out there and how
20 many cars? Is that right, one, two, three -- no. Six
21 deputies and how many cars?

22 A. I believe there was five because Deputy Joy
23 and Deputy Schilling were riding together.

24 Q. And did you assume any particular duties when
25 you arrived out there?

1 A. Sergeant Acton requesting -- requested or
2 stated for me to talk with a male subject that was there
3 on scene outside the driveway.

4 Q. Did you ascertain this male subject's name?

5 A. Yes.

6 Q. What was it?

7 A. James Knapp.

8 Q. And Mr. Knapp you say was outside the scene?

9 A. Yes.

10 Q. Where was he located when you first saw him?

11 A. Parked outside the driveway.

12 Q. And what kind of vehicle was he driving?

13 A. Toyota pickup. A white Toyota pickup.

14 Q. Was he parked on the roadway?

15 A. Off the roadway outside the driveway.

16 Q. Okay. And so did you have a conversation with
17 Mr. Knapp?

18 A. Yes.

19 Q. Did you find out what he was doing there at
20 the scene?

21 A. Yes.

22 Q. What did you find out?

23 A. I found out that he lives in the guest house
24 next to the main residence.

25 Q. And did you gather any further information

1 concerning Mr. Knapp?

2 A. Yes.

3 Q. What?

4 A. What his relationship was there. Where he'd
5 been throughout the day.

6 Q. What was his relationship to that particular
7 scene?

8 A. He says he was a guest. Lived in the guest
9 house. Friend of the homeowner named Carol Kennedy who he
10 had been friends with for 15 years. He said that he was
11 there also for moral support for both of them because they
12 both went through a divorce together, or not together, but
13 they both went through divorces and were kind of
14 supporting each other through that.

15 Q. I see. And did you ask Mr. Knapp where he had
16 been or did you ascertain where Mr. Knapp had been
17 earlier?

18 A. Yes.

19 Q. What did he say?

20 A. He said that he was over at his ex-wife's
21 house visiting his sons.

22 Q. Did Sergeant Acton ask you to get this
23 information from Mr. Knapp?

24 A. Sergeant -- well, I think it was Sergeant
25 Howard that asked me to speak with him. Sergeant Acton is

1 the one that told me to stay with him initially.

2 Q. Okay. And after speaking with Mr. Knapp and
3 obtaining this information from him, what did you do in
4 regard to Mr. Knapp?

5 A. Just stayed with him. Spoke with him.

6 Q. Did he remain inside of his truck?

7 A. Initially, yes. After he discovered that
8 Carol was deceased he did get out of the truck.

9 Q. At any point in time did Mr. Knapp try and
10 establish contact with Carol Kennedy?

11 A. Yes. When I was initially speaking with him,
12 he was very concerned, wondering what was going on and he
13 said he was going to try and call Carol and he picked up
14 his cell phone and called somebody and was referring to
15 Carol or like he was talking to Carol's answering machine,
16 asking her where she was at, if she was all right, and
17 explaining that we were there and he was very concerned.

18 Q. Okay. Did he tell you what phone number he
19 was calling?

20 A. No.

21 Q. But it sounded as if he was leaving a message
22 for her?

23 A. Yes.

24 Q. And did he ever get to speak directly with
25 somebody when he was making these calls?

1 A. No. It didn't sound like it.

2 Q. After making these calls -- how many calls did
3 Mr. Knapp make?

4 A. Just the one I believe.

5 Q. Okay. And after making the telephone call --
6 was this done in his vehicle while he was still in his
7 vehicle?

8 A. Yes.

9 Q. You indicated that he exited his vehicle at
10 some point?

11 A. Yes.

12 Q. When he exited his vehicle, did you take a
13 look inside his vehicle?

14 A. Yes.

15 Q. What were you looking inside his vehicle for?

16 A. Just anything suspicious.

17 Q. Did you conduct a full search of his vehicle?

18 A. No. No. It was a visual search from the
19 outside.

20 Q. Just a plain view-type of search?

21 A. Yes.

22 Q. And were you looking for weapons?

23 A. I was looking for anything suspicious at that
24 point. Just anything that stood out, out of the normal.

25 Q. Did you see anything?

1 A. No.

2 Q. And do you recall approximately what time
3 Mr. Knapp arrived?

4 A. I wasn't there. When I arrived Sergeant Acton
5 did it, reported it over the radio, that a male subject
6 had just pulled up when he arrived.

7 Q. So you weren't there at the time of
8 Mr. Knapp's arrival?

9 A. No.

10 Q. What time did you arrive at the scene?

11 A. At 9:17 p.m.

12 Q. And at some point did you begin maintaining a
13 crime log -- crime scene log?

14 A. One of the other deputies, I believe, it was
15 -- I'm not sure who started the crime scene log, but I did
16 control that log for a period and then released it to a
17 volunteer and protection from the sheriff's office. A
18 volunteer named Dan Delehunte (phonetic).

19 Q. Okay. Let me show you what's been admitted
20 into evidence at this point in time as Exhibit 1613.

21 May I approach?

22 THE COURT: You may.

23 MR. BUTNER: Okay. Thanks. Thanks, Phil.

24 Q. Do you recognize that particular document,
25 sir?

1 A. It's a -- yes.

2 Q. What is it?

3 A. It's a Yavapai County Sheriff's Office Crime
4 Scene Sign-in Log.

5 Q. And do you recognize that specific Yavapai
6 County Sheriff's Crime Scene Log?

7 A. Yes.

8 Q. Okay. Is that the one that you had in your
9 possession for a period of time when you were out at
10 Bridle Path?

11 A. Yes.

12 Q. You maintained that?

13 A. Yes.

14 Q. Where were you when you maintained that crime
15 scene log?

16 A. Standing outside the driveway.

17 Q. So you were actually just outside the crime
18 scene?

19 A. Yes.

20 Q. Mind if I take this and put it on the
21 overhead?

22 A. Yes.

23 Q. Oh, you do mind?

24 A. No. No.

25 Q. Please let me, okay? Are there specific

1 entries on this crime scene log that you have made?

2 A. I don't recognize my handwriting on any of
3 those.

4 Q. So when you were maintaining the crime scene
5 log, was anybody signing in with you or were you logging
6 anybody in?

7 A. Yes. On the second -- I believe it was the
8 second page.

9 Q. Okay.

10 A. It had my handwriting on it.

11 Q. All right. Which entries were maintained by
12 you?

13 A. If I could -- can I approach and look at the
14 overhead itself?

15 Q. You have a laser pointer right in front of you
16 there.

17 A. Okay. Can I stand up so I can see and
18 actually look at my handwriting because I can't exactly
19 see at this angle.

20 MR. BUTNER: Sure.

21 THE WITNESS: Thank you.

22 THE COURT: If you need to look at the
23 original.

24 THE WITNESS: Thank you.

25 MR. BUTNER: Yeah.

1 Q. You could do that too if you want to.

2 A. Okay. See if I can figure out this thing.
3 Technology here.

4 Q. Right.

5 A. That's me (indicating) my handwriting and
6 that's (indicating) Mascher, Lieutenant D. Rhodes,
7 Sergeant Huante, and it looks like I logged myself as
8 going in and James Knapp. After that it's not my
9 handwriting anymore.

10 Q. Okay. So when you got the crime scene log,
11 all of those other entries had been made before you were
12 -- you handed it?

13 A. Yes.

14 Q. You handled it, rather?

15 A. Yes.

16 Q. Okay. And you and Mr. Knapp then entered the
17 crime scene at 0104 is that correct?

18 A. Yes.

19 Q. So 1 o'clock in the morning, 1:04 a.m.?

20 A. Yes.

21 Q. What did you do when you entered the crime
22 scene?

23 A. I was instructed to escort Mr. Knapp in there
24 to his residence so he could retrieve his medications.

25 Q. So you went back to what location in the crime

1 scene?

2 A. To his residence which would have been on the
3 south portion of the crime scene.

4 Q. So you went to the guest house?

5 A. The guest house, yes.

6 Q. Okay. And did you go into the guest -- you
7 can go back.

8 A. I didn't --

9 Q. Sure. And did you go inside the guest house
10 with Mr. Knapp?

11 A. Yes.

12 Q. Stayed with him the entire time?

13 A. Yes.

14 Q. And then escorted him back out?

15 A. Yes.

16 Q. When you were with Mr. Knapp approximately how
17 long a time were you with Mr. Knapp?

18 A. I don't recall. It was a lengthy period.
19 Probably -- if I could look at that maybe I could kind of
20 tell.

21 Q. Well, you indicated that you arrived at the
22 scene at 9:17.

23 A. 9:17, yes. And it was soon after we exited
24 the crime scene at -- looks like about 1:12 -- 1 -- around
25 that time he then left. James Knapp left.

1 Q. And so Mr. Knapp was in your company that
2 entire time?

3 A. Yes.

4 Q. And you had already taken a look inside his
5 vehicle looking for anything suspicious, right?

6 A. Yes.

7 Q. Did you scrutinize Mr. Knapp personally, so to
8 speak, to see if there was anything suspicious about
9 Mr. Knapp?

10 A. Yes.

11 Q. Did you check his clothes?

12 A. I looked him up and down to see if I could see
13 any kind of injuries, any sign any blood, just his general
14 demeanor, just to see if there was anything there to
15 indicate he would be suspect and he was suspect.

16 Q. He was suspect --

17 A. Yes.

18 Q. -- at the time that you were checking him out?

19 A. Yes.

20 Q. Did he have any marks on him?

21 A. No, not that I saw.

22 Q. Did you see any type of injuries on him?

23 A. No.

24 Q. Okay. Do you recall how he was dressed?

25 A. Yes.

1 Q. How was he dressed?

2 A. Shorts, tank top, I believe, flip flops,
3 summer -- summer clothing.

4 Q. It was July the 2nd in Arizona, right?

5 A. Yes.

6 Q. And in going and looking him over, did you
7 look at his skin and so forth to see any marks or anything
8 of that nature?

9 A. Yes.

10 Q. And what did he look like?

11 A. Just in general what did he look like? He
12 looked clean, white male, older kind of grayish hair,
13 clean.

14 Q. Okay. And did you have a conversation with
15 Mr. Knapp?

16 A. Yes.

17 Q. How was he acting in terms of his demeanor?

18 A. Initially he was very worried, concerned about
19 why we were there. It wasn't until after I told him that
20 Carol was deceased that he became very, very, visually
21 upset, emotionally upset beyond explanation. It was very
22 sad to witness.

23 Q. And did Mr. Knapp explain to you why he needed
24 to go in and get his medication?

25 A. I don't recall what he said but, yeah, he had

1 some prescription medication. I was instructed to escort
2 him in there to get it.

3 Q. Did you check to make sure it was his
4 prescription medication?

5 A. No, I did not.

6 Q. You took him into the guest house?

7 A. Yes.

8 Q. He retrieved it from some place in there? Do
9 you remember where?

10 A. The bathroom.

11 Q. Okay. And did Mr. Knapp then leave?

12 A. Yes.

13 Q. And how long were you at this particular crime
14 scene?

15 A. I would have to look at the radio log to see
16 what time I left.

17 Q. Approximately what time did you leave, do you
18 know?

19 A. I don't recall.

20 Q. Did you work your normal shift?

21 A. I believe I worked a little bit of overtime.

22 Q. Okay. So what other duties in addition to
23 maintaining this crime scene log and escorting Mr. Knapp,
24 what other duties did you perform to your recollection in
25 connection with this investigation?

1 A. I was instructed to go with Sergeant Howard
2 inside the main residence and get some water for the dogs.

3 Q. Okay. And where were the dogs located when
4 you went to get water for them?

5 A. They were in a bedroom.

6 Q. Do you know who had put the dogs in the
7 bedroom?

8 A. No.

9 Q. Could you describe for us where the bedroom
10 was located in which the dogs were placed?

11 A. Yes.

12 Q. Tell us where, please.

13 A. When you walk through the door, I guess it
14 would be on the south door, behind it was -- behind like a
15 brick wall and you walk through there and you kind of go
16 through the kitchen and you turn down the hall and the
17 first door on the left was the bedroom where the dogs were
18 at.

19 Q. Okay. And how many dogs were in there?

20 A. I don't recall. There was two, I believe, but
21 I don't know for sure.

22 Q. At least two?

23 A. At least two.

24 Q. And you got them water?

25 A. Yes.

1 Q. Were they running loose around the interior of
2 the house when you went in there?

3 A. No.

4 Q. And in addition to getting the dogs water, did
5 you perform other duties in connection with this
6 particular scene?

7 A. No.

8 Q. Did you go anyplace else to do further
9 investigation as a part of this particular crime scene?

10 A. No, not for investigation.

11 Q. Okay. You remained basically outside of the
12 scene with the crime scene log?

13 A. Yes, for a short period at the crime scene
14 log.

15 Q. And then you went in with Mr. Knapp --
16 escorted Mr. Knapp and you also got water for the dogs.
17 Is there anything else that you can recall that you did in
18 connection with this particular crime scene?

19 A. No.

20 Q. Did Mr. Knapp tell you what he was doing with
21 his son that evening?

22 A. Yes.

23 Q. What did he say?

24 A. Watching a movie.

25 Q. And did he indicate to you where he was

1 watching this movie?

2 A. At his ex-wife's house.

3 Q. Did he indicate to you whether this was a
4 regular occurrence for him or not?

5 A. Yes. He kind of indicated that he likes to
6 visit with his son and to tries to do that whenever he
7 can.

8 Q. Did he have specific days that he visited on?

9 A. I don't recall. I don't believe I even asked
10 that.

11 (Mr. Butner and Mr. Paupore confer off the record.)

12 MR. BUTNER:

13 Q. Is there anything further that Mr. Knapp
14 mentioned to you in connection with his visit to his son's
15 or his ex-wife's visit with his son?

16 A. He had mentioned that his ex-mother-in-law had
17 showed up while he was there visiting. I think he had
18 said that she was in and out of the house while he was
19 there. She had stopped by.

20 MR. BUTNER: I don't have any further
21 questions of this witness at this time.

22 THE WITNESS: Thank you.

23 MR. BUTNER: You may remain seated.

24 THE WITNESS: Yes.

25 THE COURT: Cross.

1 MR. SEARS: Thank you, Your Honor.

2

3

CROSS-EXAMINATION

4 BY MR. SEARS:

5

6

7

8

Q. Deputy Boan, let me see if I understand the timing of this a little bit. In a departmental report that you wrote about this episode you said that you arrived at the residence at 9:03.

9

10

Is that actually the time that you got the call?

11

12

13

14

15

16

A. No. I did make a mistake on my department report. After I -- looking at the radio log, I had originally wrote in my report that I arrived 2103 which is the time that I started responding to that call and I did make a mistake in that report. My radio log actually reflected it was 2117 that I arrived.

17

18

19

Q. Okay. And when you got there who was there?

A. Sergeant Acton, Deputy Taintor and I arrived at the same time with Sergeant Howard.

20

21

Q. Were you in the same vehicle?

A. No.

22

23

Q. So now there's four police vehicles that are there by the time you and Sergeant Howard get out?

24

A. Yes.

25

Q. Okay. And are all four of you parked outside

1 that little low wall out on the street?

2 A. I don't recall.

3 Q. Did you see any police vehicles inside the
4 property inside that opening on the driveway part?

5 A. I don't recall.

6 Q. Did you see any automobile tire tracks on the
7 driveway? I guess it was almost four hours that you were
8 standing out there with Mr. Knapp, right?

9 A. Yes.

10 Q. Did you see automobile tire tracks out in
11 front of you on the driveway?

12 A. I don't remember looking for tire tracks, no,
13 sir. I don't recall.

14 Q. Did you see any police officer -- you were
15 there the first part of this investigation, first
16 responders, and then the fire and emergency personnel and
17 then criminal investigation, detectives, and it sounds
18 like you were probably there even when the collection of
19 evidence began, correct?

20 A. I don't know when the collection of evidence
21 began.

22 Q. Okay. When you got there, though, no one from
23 law enforcement had been inside the house yet, right?

24 A. Not to my knowledge, no.

25 Q. And, in fact, the first entry was made while

1 you were standing by with Mr. Knapp, were you aware of
2 that?

3 A. Yes. That's to my -- to my knowledge that was
4 the initial time --

5 Q. That all the other --

6 A. -- somebody went in.

7 Q. The two Sergeants, Howard and Acton, and
8 Schilling and Joy and Taintor all made entry into both
9 residences kind of right in front of you, right?

10 A. I was instructed to stay with Mr. Knapp. They
11 were kind of doing or formulating a plan what they were
12 going to go do and so, yes, they were proceeding towards
13 the house.

14 Q. Okay. And during the course of the time that
15 you were standing out there with Mr. Knapp, lots of other
16 law enforcement personnel showed up on the scene, right?

17 A. While they were in there searching the house,
18 is that what you mean?

19 Q. No. In the four hours that you were standing
20 out there with Mr. Knapp, the scene was full of police
21 officers, right?

22 A. No, not to my knowledge.

23 Q. Sorry?

24 A. No.

25 Q. You didn't see a detective show up while you

1 there?

2 A. Yes, I saw some detectives show up.

3 Q. And maybe full is my description. Other law
4 enforcement personnel showed up besides the six of you,
5 right?

6 A. Yes.

7 Q. Okay. Fire and emergency personnel showed up?

8 A. Yes.

9 Q. And they came and went while you were there,
10 correct?

11 A. Yes.

12 Q. Okay. And more than one detective responded,
13 right?

14 A. Yes.

15 Q. And then some pretty high command people,
16 Commander Mascher, Lieutenant Rhodes, you know all of
17 those people, right?

18 A. Yes.

19 Q. The sheriff was actually there briefly, right?

20 A. I don't recall that at all.

21 Q. Take a minute and look at that and look at the
22 sign-in sheet and see if we see Sheriff Waugh. 1613. Is
23 that Sheriff Waugh's name there?

24 A. I have to step back. I can't read that
25 writing at all.

1 Q. It's also the next morning. It looks like he
2 was there after you cleared the scene.

3 A. I was not there.

4 Q. That would explain why you didn't see him.

5 A. Yep.

6 Q. It was a busy crime scene, right?

7 A. Initially, yes.

8 Q. Now, when you get there and Mr. Knapp's in
9 this little white pickup truck, is he inside the vehicle
10 when you come up?

11 A. Yes.

12 Q. Does he spend most of the time with you inside
13 the vehicle or is he outstanding with you or is he --

14 A. He's sitting inside the truck.

15 Q. You're standing by the driver's window with
16 him?

17 A. Yes.

18 Q. Did you leave him alone at any point?

19 A. Yes.

20 Q. What did you go do?

21 A. Walked over to talk to the Sergeants once they
22 exited the crime scene.

23 Q. How far away from Mr. Knapp did you get?

24 A. I would say 100 feet, up to 100 feet.

25 Q. How long were you away from him?

1 A. There were probably periods, I would say, five
2 to ten minutes at times when he was standing outside the
3 vehicle.

4 Q. Okay. Let me understand this, Mr. Knapp is
5 there when you are there. Sergeant Acton says, we're
6 going to go inside the house, you stay with this guy,
7 right?

8 A. Yes.

9 Q. And that's what you did basically?

10 A. Yes.

11 Q. For four hours almost from 9:17 to 1:12 in the
12 morning roughly?

13 A. Yes.

14 Q. And then he leaves and during that period of
15 time Mr. Knapp is just there in his vehicle, is that what
16 you're saying, he doesn't leave? He doesn't say he needs
17 to go home? He's just there?

18 A. He's just there, yeah.

19 Q. And early on he wants to make a phone call.
20 Now, when we wants to make this phone call, there were at
21 least four police vehicles on scene, right?

22 A. Yes.

23 Q. And Mr. Knapp's been advised that this is a
24 suspicious situation, right?

25 A. Yes.

1 Q. Has Mr. Knapp been told that Carol Kennedy is
2 dead at that point?

3 A. Not at that point, no.

4 Q. Now, was Mr. Knapp told by any law enforcement
5 not to call?

6 A. Can you specify who you're talking about to
7 call?

8 Q. Mr. Knapp --

9 A. To make any phone calls?

10 Q. Call into the house trying to call Carol
11 Kennedy?

12 A. No, I never told him not to call.

13 Q. Okay. But he did and he was talking on his
14 phone and you think it was to her answering machine; is
15 that right?

16 A. Yes.

17 Q. How soon did you start sitting with him did he
18 make that call?

19 A. It was within the first five minutes.

20 Q. When did Mr. Knapp learn, if at all, that
21 Carol Kennedy was dead?

22 A. When the Fire Department was there they pulled
23 up. Some of them entered the crime scene. They came back
24 out and started packing up their stuff and he -- he put
25 two and two together. He knew something was seriously

1 wrong and he looked at me and he said, she's dead, isn't
2 she?

3 Q. What did you say?

4 A. I said, yes, I'm sorry to tell you but, yes,
5 she is deceased.

6 Q. But you had known since you pulled up,
7 basically, when you got a briefing, that there was a
8 deceased body inside that house, right?

9 A. I did not know. There was a suspicious
10 circumstance. I did not know for certain if somebody was
11 deceased inside that house.

12 Q. Until you saw the EMT's and the fireman
13 packing up their stuff is that when you knew?

14 A. When the firemen starting packing up and
15 leaving and the sergeants came out and briefed me, yeah.

16 Q. Okay. They told you before Mr. Knapp asked
17 you so when he asked you, you knew she was dead, right?

18 A. Yes.

19 Q. Okay. And tell me -- you said he had this
20 reaction. I wrote down what you said. I wrote down what
21 you said. It struck me. You said that he was upset
22 beyond explanation. What do you mean by that?

23 A. Very emotionally upset. You could just see
24 the tears, the shock, the -- couldn't believe that she was
25 gone. At that point that's when he stepped out of the

1 truck. He said, can I get out and get some air. Just
2 very, very emotionally upset.

3 Q. You never been around this man before? You
4 didn't know him before that?

5 A. I have never met him before.

6 Q. So you had no idea how he behaved under any
7 circumstances, right?

8 A. No.

9 Q. Okay. Prior to that time when he became upset
10 beyond explanation, was he getting increasingly anxious
11 though?

12 A. Yes.

13 Q. Did he ask you to go into his guest house?

14 A. I don't recall.

15 Q. Did he ask you to go into the main house?

16 A. I don't recall.

17 Q. Was he ever let into the main house?

18 A. No.

19 Q. These crime scene sign-in logs that we're
20 seeing here, reflect Mr. Knapp briefly, that's when you
21 escorted him to get his medications right before he left,
22 right?

23 A. Yes.

24 Q. If he had gone -- actually, gone into the main
25 house, that would have been noted, right, he would have

1 been a civilian with no law enforcement emergency
2 connection with the case, right?

3 A. Yes.

4 Q. Mr. Knapp was not taken into the crime scene
5 while you were there, the crime scene being the main
6 house?

7 A. No.

8 Q. Mr. Knapp over the course of this period of
9 time sounds like he gave you a very detailed explanation
10 of where he'd been and what he'd been doing, right?

11 A. He briefly touched or explained to me where he
12 had been at that day.

13 Q. Your report on this says that he told you the
14 name of his ex-wife?

15 A. Yes.

16 Q. Her telephone number?

17 A. Yes.

18 Q. Her address?

19 A. Yes.

20 Q. The names of his children?

21 A. Yes.

22 Q. That he had been watching the youngest child
23 while his oldest child went to hockey practice, he gave
24 you that information?

25 A. Yes.

1 Q. He told you that his ex-mother-in-law was at
2 the house, right?

3 A. Yes.

4 Q. He told you that he left about 1 o'clock in
5 the afternoon to go there, correct?

6 A. Yes.

7 Q. He told you that he left there about 8:30 when
8 his ex-wife came home, correct?

9 A. Yes.

10 Q. Okay. And that he had more or less come
11 directly back to the Bridle Path location after he left
12 his ex-wife's house. He gave you all of that information
13 over the course of the evening, correct?

14 A. Yes.

15 Q. Who then that night called his ex-wife to
16 check his alibi?

17 A. I don't know.

18 Q. Who did you tell about Mr. Knapp's alibi? Who
19 did you report to?

20 A. Sergeant Acton and Sergeant Howard.

21 Q. When?

22 A. Throughout the evening.

23 Q. Okay. You had a guy on the scene that you
24 said was suspect, right, he lives right on the property
25 and he's there, right?

1 A. Yes.

2 Q. And he gives you an alibi, right?

3 A. He tells me where he's at.

4 Q. A very detail -- well, it's an alibi, right?

5 A. Yes.

6 Q. He's a suspect. An alibi wouldn't be an
7 explanation of where he was, correct?

8 A. Yes.

9 Q. And that's what he told you, right?

10 A. Yes.

11 Q. And how far is that guest house from the main
12 house?

13 A. You're asking me to guess; is that correct?

14 Q. I just -- if you know. If you have an
15 opinion?

16 A. I don't know.

17 Q. Less than 100 yards?

18 A. Yes.

19 Q. Less than 100 feet?

20 A. I don't know. It could be over 100 feet.
21 Could be just under 100 feet. I don't know.

22 Q. Let me understand this, you got a guy that
23 says he lives on the property, some relatively short
24 distance from the place where a deceased body was found,
25 correct?

1 A. Yes.

2 Q. Under suspicious circumstances?

3 A. Yes.

4 Q. He just shows up, right, as far as you know?

5 A. As far as I know, yes.

6 Q. He's not invited by law enforcement to come.

7 He just appeared?

8 A. He just appeared.

9 Q. He's talking constantly to you about all of
10 this information and he gives you a detailed alibi,
11 correct?

12 A. Yes.

13 Q. Okay. Did it occur -- did you have a phone?

14 A. I don't know if I had a phone that night or
15 not. I don't know.

16 Q. Did you suggest to Sergeant Acton or Sergeant
17 Howard or anybody else at some point that you got a
18 telephone number of the person that Knapp said he was
19 with, you might want to give them a call and check it out
20 before we let this guy go?

21 A. No, I never made that suggestion.

22 Q. You tape-recorded your contact with Mr. Knapp,
23 right?

24 A. Not the whole contact, no.

25 Q. What did you do with that tape?

1 A. I turned it into evidence.

2 Q. Who did you tell about it?

3 A. I put it in my report.

4 Q. Okay. Who approved your report?

5 A. The Sergeant. It would have been, I believe,
6 at that time Sergeant Howard.

7 Q. Okay. In your experience, Deputy --

8 A. Or actually I don't think Sergeant Howard
9 would have approved that report, because it was referred
10 to Criminal Investigations Bureau. I believe one of them
11 may have approved it.

12 Q. Okay. In your experience, you've been a
13 deputy now more than ten years, correct?

14 A. Yes.

15 Q. And at the time you'd been a deputy about nine
16 years, right?

17 A. Eight probably.

18 Q. Okay. In your experience, if you get a person
19 who is a suspect in your mind in a crime scene, they give
20 you an alibi, isn't it terribly important to check that
21 alibi out right away?

22 A. I believe that the Criminal Investigations
23 Bureau would have been handling that.

24 Q. Did you talk to anybody from Criminal
25 Investigations and pass on the idea, we got this guy here,

1 he lives there, here's his alibi information?

2 A. I believe that the sergeants did that.

3 Q. You don't know for sure, right?

4 A. I don't know for sure.

5 Q. So you don't know when, if at all, Mr. Knapp's
6 alibi was investigated, correct?

7 A. No, I have no idea.

8 Q. And there was a bit of time that Mr. Knapp was
9 in his vehicle, right, when you weren't there? You told
10 us that you went over and talked to Sergeant Huante,
11 right?

12 A. Yes.

13 Q. And you were 100, 200 feet away, right?

14 A. A hundred feet probably.

15 Q. Mr. Knapp could have called anybody from his
16 cell phone, right?

17 A. Yes.

18 Q. Isn't it important in your experience, Deputy,
19 to check out an alibi before the suspect has a chance to
20 get with his alibi witnesses and get their story straight?

21 A. Yeah.

22 Q. Yeah. In Mr. Knapp's case, Mr. Knapp at some
23 point said he wasn't going to stay there that night, he
24 was going to stay at a motel; is that right?

25 A. I think he was instructed to by one of the

1 detectives to go stay somewhere.

2 Q. Your report says, James stated that he was
3 going to go stay the night at the Marriott Residence Inn
4 in Prescott, period, that's what your report says.

5 A. Yes.

6 Q. If he had been instructed by someone else to
7 do that, isn't it likely you would have written that in
8 your report?

9 A. I didn't know who -- I know that he was
10 instructed he was okay to go. I remember him telling me
11 that I'm going to go stay at the Marriott.

12 Q. And that was sometime after 1 in the morning,
13 right?

14 A. Yes.

15 Q. Did anyone tell you, any other law enforcement
16 personnel tell you to get Mr. Knapp out of the property
17 and tell him to go stay someplace else, were you given
18 that instruction?

19 A. No. I was instructed to go in there, that he
20 was free to go, and then to go escort him in there, get
21 his medications, and exit the crime scene.

22 Q. So when Mr. Knapp left your presence, you have
23 no idea whether anybody had checked out any part of his
24 alibi, right?

25 A. I have no clue.

1 Q. Okay. So it could have been a serious suspect
2 in this crime just driving away into the darkness, right?

3 A. Yep. Yes.

4 Q. Did you think about that?

5 A. Yes.

6 Q. Concerned you?

7 A. No.

8 MR. SEARS: No other questions.

9 THE COURT: Redirect.
10

11

REDIRECT EXAMINATION

12 BY MR. BUTNER:

13 Q. Deputy Boan, you said that Mr. Knapp became
14 very upset. Would you describe for us how he exhibited
15 how upset he was?

16 A. The look of shock on his face, crying, taking
17 deep breaths. He was upset.

18 Q. Okay. And Mr. Sears indicated that Mr. Knapp
19 just -- I think as he put it, just showed up. Mr. Knapp
20 was coming home, right?

21 A. To my knowledge, yes.

22 Q. That's where he lived?

23 A. Yes.

24 Q. And he indicated to you where he had been?

25 A. Yes.

1 Q. You were with him about four hours, right?

2 A. Yes.

3 Q. Did you ask him questions to find out all of
4 this information that constituted his, quote, detailed
5 alibi?

6 A. That's how I came up with where he was at as I
7 was asking him these questions.

8 Q. He didn't just --

9 A. He didn't just --

10 Q. -- blurt it all out?

11 A. No. He just was telling me where he had been
12 or I asked him where have you been. When did you go
13 there. Who else was there. When did they come home.
14 When was the last time you saw Carol. Questions such as
15 that nature.

16 Q. All of that just transpired rather gradually
17 over the --

18 A. Yes.

19 Q. -- several hour --

20 A. Yes.

21 Q. -- period?

22 A. Yes.

23 Q. And so when Mr. Knapp drove off, so to speak,
24 and you indicated that you weren't really concerned, why
25 was that?

1 A. At that point the detectives had arrived. I
2 thought that they had been briefed on everything and I
3 believed that they were going to be doing follow-up with
4 it with Mr. Knapp.

5 Q. You had done your duties, so to speak,
6 gathering all of that information that could be followed
7 up on by the detectives?

8 A. Yes, of where he was staying and how they
9 could contact him.

10 MR. BUTNER: I don't have any further
11 questions of this witness.

12 THE COURT: Members of the Jury, any questions
13 for Deputy Boan? I see some. Let me see counsel at
14 side-bar.

15 (Whereupon, proceedings were held at
16 side-bar held off the record and the
17 following proceedings were resumed
18 in open court.)

19 THE COURT: Couple of questions for you,
20 Deputy Boan. On the crime scene log -- so to be fair,
21 I'll give you Exhibit 1613.

22 THE WITNESS: Sure.

23 THE COURT: It says, on the crime scene log
24 why was it not noted when the first five deputies left the
25 crime scene?

1 THE WITNESS: I don't know.

2 THE COURT: I'll take that back.

3 THE WITNESS: Thanks, Your Honor.

4 THE COURT: Thank you. Secondly, did
5 Mr. Knapp take anything else besides his medication from
6 the guest house?

7 THE WITNESS: He had placed the medications in
8 a plastic grocery bag.

9 THE COURT: Anything else that you saw?

10 THE WITNESS: No.

11 THE COURT: Next question, this -- asking you,
12 did you use your flashlight when you inspected James
13 Knapp's body and clothes?

14 THE WITNESS: Yes.

15 THE COURT: Any additional questions from the
16 jury? Gentlemen, before I turn the witness back over to
17 you, let's see you at side-bar one more time.

18 (Whereupon, proceedings were held at
19 side-bar off the record and the
20 following proceedings were resumed
21 in open court.)

22 THE COURT: One more question. How long had
23 James Knapp been at the scene until the point where he
24 asked or said Carol is dead, isn't she.

25 THE WITNESS: I don't know how long we'd been

1 there at that point.

2 THE COURT: All right. Now, with regard to
3 all of the questions, Mr. Butner, follow-up?

4 MR. BUTNER: Deputy Boan, the crime scene log
5 -- wherever that's located.

6 THE COURT: It's back up here with the Clerk.

7 MR. BUTNER: How --

8 THE COURT: Exhibit 1613.

9 MR. BUTNER: Exactly. Thank you.

10 THE BAILIFF: Yes, sir.

11

12 REDIRECT EXAMINATION (Further)

13 BY MR. BUTNER:

14 Q. Okay. The crime scene log indicates when the
15 people from Central Yavapai Fire Department and Life Line
16 were at the crime scene, right?

17 A. Yes, looks like it.

18 Q. And you were out front of the residence with
19 Mr. Knapp while they were in the crime scene; is that
20 correct?

21 A. Yes.

22 Q. And was it after they had exited the crime
23 scene that Mr. Knapp asked you or said, basically, Carol
24 is dead, isn't she?

25 A. Yes, that's the time that's indicated. Time

1 out is actually when they cross that exit, the fence,
2 where they've got the crime scene tape. That's --
3 typically when the person's log in, that will log it when
4 they exit. It's at that point when Mr. Knapp sees them
5 putting their equipment away, they're not bringing anybody
6 out on a stretcher, something's going on, he started
7 knowing something was wrong.

8 Q. Was it before they actually signed or were
9 signed out by the time there, at 2150, 2 or 3, or was it
10 about that time?

11 A. About that time, yes.

12 Q. When the EMTs and the Fire Department people,
13 when they got there, where did they park?

14 A. On the roadway I believe, yes.

15 Q. When you had conversation with Mr. Knapp, did
16 you ask him where he parked his truck?

17 A. No.

18 Q. He didn't mention --

19 A. I don't recall.

20 Q. -- to you where he usually parked his truck in
21 reference to the premises?

22 A. No, I don't recall that.

23 MR. BUTNER: No further follow-up at this
24 time. Thank you.

25 THE COURT: Mr. Sears.

1 THE WITNESS: Thank you.

2

3 RECROSS EXAMINATION

4 BY MR. SEARS:

5 Q. Deputy, I'm not sure that I completely
6 understood your answer to one of the jury questions about
7 whether you used your flashlight to look at Mr. Knapp.

8 Could you tell me that again?

9 A. Yes. I recall having my flashlight out with
10 me.

11 Q. And you said -- did you use your flashlight to
12 look into his truck?

13 A. Yes.

14 Q. Did you actually get into his truck at any
15 point?

16 A. No.

17 Q. Was Mr. Knapp in his truck when you were
18 looking inside?

19 A. When I -- I was looking in when I was talking
20 to him, just kind of inconspicuously looking around in
21 there, but when he stepped out of the truck, when he was
22 upset, he had left the door open, and I used that
23 opportunity to kind of really started looking him up and
24 down and looking inside of that truck.

25 Q. What did you see, if anything, inside his

1 truck?

2 A. I don't recall.

3 Q. Okay. Did you look in the bed of the pickup?
4 Was that a camper shell or was the bed open?

5 A. The bed was open, I believe.

6 Q. Did you see anything in the bed?

7 A. No, not that I recall.

8 Q. Did you consider asking Mr. Knapp for consent
9 to search his truck?

10 A. No.

11 Q. Why?

12 A. Just never asked him. I always figuring that
13 the detectives when they arrived were going to secure it
14 and make sure that the scene is safe for them to arrive,
15 make sure that it's safe for the personnel -- emergency
16 personnel that arrived and at that point just wait until
17 the detectives arrive.

18 Q. Shift gears for a minute here. You went with
19 Mr. Knapp into his residence to get his medication, right?

20 A. Yes.

21 Q. You walked in, turned the lights on so you
22 could see what he was doing, right?

23 A. I don't recall. I don't recall if he turned
24 the lights on or if we just used my flashlight. I don't
25 know.

1 Q. Did you go inside with him?

2 A. Yes.

3 Q. Did you follow him like wherever he went?

4 A. Yes.

5 Q. He went right to the medicine cabinet?

6 A. Yes.

7 Q. And --

8 A. Well, then he walked from the medicine cabinet
9 into the kitchen and I said, what are you getting and he
10 said, I'm going to get a plastic grocery bag. So he
11 grabbed a plastic grocery bag and walked back into the
12 bathroom and put some medications in there. And I asked
13 him, I said, do you want some clothes? Do you want some
14 shaving kit or toiletry items? He said, nah, I'll be
15 fine.

16 Q. So you made that offer and he said he didn't
17 need any of that stuff. He was going to go spend the
18 night and he didn't need a change of clothes or tooth
19 brush or anything?

20 A. That's what he said.

21 Q. And he just puts -- you watched him put the
22 prescription medication bottles into his plastic bag?

23 A. Yes.

24 Q. And that's all he took?

25 A. To my knowledge that was all he had.

1 Q. You wouldn't of let him take anything else
2 without talking to him about it, right?

3 A. Yeah. I would of looked to see what it was he
4 was taking.

5 Q. You wouldn't let him reach into a drawer or
6 into a closet or something without being able to see what
7 he was reaching for, right?

8 A. That is correct.

9 Q. That's just common sense and basic safety,
10 right?

11 A. Yes.

12 Q. You don't know who this guy is, right?

13 A. I don't know who he is.

14 MR. SEARS: No other questions.

15 THE COURT: Mr. Butner.

16 MR. BUTNER: No follow-up, Judge. Thank you.

17 THE COURT: Any further questions from the
18 jury? I don't see any. Do you wish to release the Deputy
19 from his subpoena?

20 MR. BUTNER: He may.

21 MR. SEARS: He could be released, Your Honor.

22 THE COURT: You are released from the subpoena
23 and you are not going to get called back so if you want to
24 you could remain in the room for additional testimony.
25 The rule excluding witness, however, has been invoked.

1 Don't discuss your testimony without anyone or with the
2 lawyers or with potential witnesses who could get called
3 in the case.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: But you are excused. Thank you.

6 Mr. Butner, do you have other witnesses.

7 MR. BUTNER: I do have one witness that's been
8 waiting patiently, Judge, or maybe impatiently.

9 THE COURT: You may call him or her.

10 MR. BUTNER: Okay. I would call Ryan Aspa of
11 the Central Yavapai Fire Department.

12 THE COURT: Do you have the spelling of the
13 witness/.

14 MR. BUTNER: A-s-p-a.

15 THE COURT: Thank you. Mr. Butner.

16 MR. BUTNER: Thank you.

17

18 RYAN NEIL ASPA,
19 called as a witness, having been sworn, testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. BUTNER:

23 Q. Please state your name for the record.

24 A. My name is Ryan Neil Aspa.

25 Q. And what is your occupation, Mr. Aspa?

1 A. I'm a Firefighter EMT for Central Yavapai
2 Fire.

3 Q. And how long have you been a Firefighter EMT
4 for Central Yavapai Fire Department?

5 A. Since '95. Full-time since 2001.

6 Q. And have you been an EMT that entire time?

7 A. Yes, sir.

8 Q. And were you performing your duties as an EMT
9 with the Central Yavapai Fire Department on July the 2nd
10 of the year 2008?

11 A. Yes, sir.

12 Q. Do you recall responding to a location out at
13 7485 Bridle Path out Williamson Valley Road?

14 A. Yes, sir.

15 Q. Do you recall approximately when you responded
16 to that location?

17 A. I believe we were on the scene somewhere
18 between 2140 to 2145 hours.

19 Q. Okay. And for us civilians --

20 A. 9:40, 9:45 --

21 Q. Thank you.

22 A. -- that evening. Sorry.

23 Q. That's all right. 9:40 to 9:45. Okay. And
24 had you been dispatched for a specific call there?

25 A. I don't remember exactly how it was

1 dispatched. I believe it was unknown medical.

2 Q. Okay.

3 A. We responded to Med 2 which is no lights and
4 sirens. So --

5 Q. So you weren't running lights and sirens
6 screaming out Williamson Valley?

7 A. That's correct.

8 Q. Okay. And when you got to that particular
9 location, do you recall where you parked the vehicle?
10 Where the vehicle was parked, I guess I should say.

11 A. It was outside the residence on the street on
12 Bridle Path. I believe it was after the entrance into the
13 house.

14 Q. All right. And tell us what you did from that
15 point?

16 A. Obviously, got out of the engine, grabbed all
17 of the gear. We were met as we were walking up to the
18 front door by one of the deputies, just forewarned us on
19 being careful what we touched, might be a possible crime
20 scene.

21 Q. And were you escorted into the scene by
22 deputy?

23 A. Yes, sir.

24 Q. And tell us where you were taken?

25 A. We were taken through the front door. We

1 walked, I believe, passed the kitchen on our right, down
2 the hall. I believe it was the last door on the left-hand
3 side where the patient was.

4 Q. And what did you find when you got to the last
5 door down there on the left?

6 A. The door was partially cracked open. I
7 believe it was being held by a ladder. We were able to
8 scoot through. The patient was right by the door there
9 laying on the ground. I believe -- I believe she was
10 laying left lateral recumbent which is on her left side, I
11 believe. I don't remember exactly how she was laying
12 there. The room was -- I think it was an office or -- or
13 a bedroom. It kind of looked like in the process of
14 moving, boxes and stuff.

15 Q. Okay. And what were your duties -- what were
16 your duties in connection with this patient at that point?

17 A. Our Captain, which is a Medic, went in first.
18 I followed. We, of course, tried to announce ourselves
19 and we placed the monitor, cardiac monitor, on her which
20 confirmed asystole on all three leads.

21 Q. You placed a cardiac monitor on her which
22 what?

23 A. Displaced asystole which is flat line on all
24 three leads.

25 Q. Okay. In other words, she was deceased at

1 that time?

2 A. Yes. According to the monitor, yes.

3 Q. No heart beat, nothing?

4 A. That's correct.

5 Q. And that's what the monitor was for with the
6 all three leads?

7 A. Yeah. We placed the monitor on her. Also we
8 confirmed that rhythm with checking pulses which we felt
9 none.

10 Q. What pulses were checked?

11 A. I believe Captain Ness checked her carotid.

12 Q. And when you placed these leads on, do they
13 transmit to some remote location in some fashion?

14 A. No. It's all hooked to one monitor and it's
15 set by our sides there. We do have the capability of
16 sending a picture to the hospital. I don't know if that
17 was done. I'm unaware of that.

18 Q. Okay. And in terms of the injuries observed,
19 did you observe any injuries?

20 A. Yes, sir.

21 Q. What were the injuries that you observed?

22 A. An open skull fracture, I believe, from the
23 occipital area, which is the backside of the head, up to
24 frontal forehead area.

25 Q. And was this on the left side of her head?

1 A. I believe it was more -- to my recollection to
2 the right -- right center about from here (indicating) to
3 there (indicating).

4 Q. Okay. And do you -- did you take note of
5 anything beyond that this was an open skull fracture? Was
6 there anything especially significant about this type of
7 fracture that you saw?

8 A. Oh, it was -- it was obvious an open fracture.
9 There was obvious brain matter being displayed there.

10 Q. So was there a piece of the skull protruding?

11 A. It was -- no other way. Basically, displayed
12 open.

13 Q. And did you note when you went down the
14 hallway if there was any blood out in the hallway?

15 A. I don't recall seeing any blood out in the
16 hallway, just around the body that was laying there.

17 Q. Would you move that mic a little bit closer to
18 you so we could hear you a little bit better.

19 A. How's that?

20 Q. I think that is actually a little bit better.
21 Thank you very much. How long were you in this scene?

22 A. I believe we were in there no longer than -- I
23 was no longer in there than 15 minutes.

24 Q. So you're in there, you don't think any longer
25 than 15 minutes, were there any other signs of injury on

1 this victim besides the injuries to her skull?

2 A. Not that I noticed. Just what I saw with the
3 head, was kind of what I focused on.

4 Q. Was there blood around the victim's body?

5 A. I believe the blood was obviously around the
6 head. Kind of the chest area that was on the ground.

7 Q. Right. So was there blood located in the
8 victim's abdominal area also then, chest and abdomen?

9 A. I don't recall. I don't remember offhand.

10 Q. Were the lights on in that back bedroom or
11 office location where you were at with this victim?

12 A. The only light I believe that was on was in
13 the kitchen.

14 Q. So you didn't have any light -- what kind of
15 lighting did you use in order to examine the body of the
16 victim?

17 A. Our flashlights.

18 Q. I'm going to need to use this Phil, please.

19 A. I believe that the light was in the kitchen
20 hall that -- I don't believe any of the lights other than
21 that in the house were on.

22 Q. Okay. Let me show you what's been admitted
23 into evidence as Exhibit Number 2284. And --

24 THE COURT: Feel free to take a step if you
25 need to see it to step down.

1 THE WITNESS: (Witness nods.)

2 MR. BUTNER:

3 Q. Do you recognize what's depicted in Exhibit
4 2284?

5 A. Yes, sir.

6 Q. And what is that, please?

7 A. That's the patient victim laying left side
8 recumbent. It's in the bedroom. The bedroom door is on
9 the patient's left and I believe to the right of the
10 patient's head was the desk that was there.

11 Q. Okay. Let me show you what's been admitted
12 into evidence as Exhibit 2329. Do you recognize what's
13 depicted in that exhibit?

14 A. Yes, sir.

15 Q. Would you tell us, please.

16 A. The -- looks like from -- the ladder was
17 laying, that was kind of blocking the door, that there was
18 a door into the room. That was the ladder. I believe
19 there was a loft up in here (indicating). Patient
20 obviously there. That was the desk that I was talking
21 about and obvious that was the hallway to the kitchen that
22 we entered from.

23 Q. And these white spots that I'm pointing at on
24 the patient's body what are those (indicating)?

25 A. Those are the electros or the monitor pads

1 that we attach to the patient that we looked at the
2 patient's heart by the EKG machine.

3 Q. Okay. And the blood that you observed at the
4 scene, it was located around the patient's head?

5 A. Yeah. In this area here (indicating). Where
6 your hand's at.

7 Q. And was it also located -- in addition to
8 around her head in another area of her body?

9 A. Just -- just with what I remember seeing is in
10 here (indicating).

11 Q. Okay. And you're also pointing to this area
12 down below her --

13 A. Yes. From right in here (indicating) to here
14 (indicating).

15 Q. Okay.

16 A. I only stepped in -- most of my contact from
17 the patient was on this side (indicating).

18 Q. And at this point in time we're referring to
19 Exhibit Number 2284 for the record. So you say that you
20 only stepped in and stayed on the left side of the
21 patient?

22 A. Yes.

23 Q. Okay. You did not go across her body?

24 A. I don't recall doing that. If I did, I didn't
25 -- I didn't for very long.

1 Q. And are you the person that affixed the
2 patches with the electrodes on them to her?

3 A. I helped my Captain do that. He did make
4 entry into the room.

5 Q. He went all the way in and you stayed over --

6 A. Yes, on this side here (indicating).

7 Q. -- as nearly to the door side as you could; is
8 that correct?

9 A. That's correct.

10 Q. And then the only injuries that were obvious
11 to you that were observed were the injuries to her head?

12 A. Yes, sir.

13 Q. No injuries to the abdominal area down here
14 (indicating) where this bloody area is located?

15 A. Yeah. I didn't -- I focused on that there
16 (indicating).

17 Q. Did you have to duck under the ladder to get
18 in?

19 A. Yes, sir. I don't -- I don't -- is this -- is
20 that the door here (indicating) or is it all the way open?
21 If I remember correctly it was where we had to actually
22 had to -- we only had so much room to get through the
23 door.

24 Q. Okay.

25 A. We had to duck because of -- obviously the

1 ladder was there.

2 Q. And then you had to work your way -- your
3 captain had to work his way across the body of the
4 patient?

5 A. That's correct.

6 Q. And you tried to stay in this area right here
7 (indicating)?

8 A. Yes.

9 Q. Okay. Thank you. Thank you.

10 THE BAILIFF: Just waiting for your commands.

11 MR. BUTNER: Oh, yes.

12 Q. So you were there approximately 15 minutes or
13 so and who pronounced her deceased at the scene?

14 A. Our Captain Medic. After we placed the
15 monitor and he patched into the hospital and relayed
16 information to the doctor, I believe it was Dr. Rounsville
17 (phonetic) that said that it was okay to pronounce. We
18 had asystole in all three leads confirmed by assessing
19 patient's pulse.

20 Q. And the Captain Medic was Captain Ness?

21 A. That's correct.

22 MR. BUTNER: Okay. Thank you. I don't have
23 any further questions of this witness at this time.

24 MR. SEARS: Very briefly.

25 Phil, if you could turn the Elmo on for me.

CROSS-EXAMINATION

BY MR. SEARS:

Q. Good to see you again, sir. How are you?

A. I'm good.

Q. Okay. This is Exhibit 2314, sir. It's a little hard to see. If you need to step down from where you're sitting, it's easy to see. This is looking down the hallway inside of that residence and the deputy is looking in the door to where the body was.

Does that orient you?

A. That's correct.

Q. Do you see a rolling bag in that hallway?

A. I'm assuming this (indicating) is what you're referring to?

Q. Yeah. Step back. Maybe it's a little clearer. Watch your step there.

A. Yes.

Q. Okay. Is that your bag?

A. That's negative.

Q. Okay. Is that in any way connected with any of the emergency work that was done in this case that you know of?

A. No.

Q. Okay. You can have a seat there. Did you all have monitoring equipment that you brought into this house

1 that would monitor the EKG that you were running on this
2 patient?

3 A. I believe all of that came down that hallway
4 was the monitor. We come in with four pieces of
5 equipment. Two boxes, our trauma box, or airway box,
6 obviously, the drug box, which is box three, and then the
7 EKG monitor which is four -- the fourth item and --

8 Q. How big is the EKG monitor?

9 A. I'd say like so (indicating). Like
10 (indicating).

11 Q. Maybe a foot and a half?

12 A. No bigger than a normal purse. A big purse.

13 Q. And did all of those boxes get bought into the
14 house that night?

15 A. I believe all of our stuff was kept in the
16 hall. I don't think anything went other than the monitor
17 into that room.

18 Q. When you say the hall, this hall we're looking
19 at here Exhibit 23?

20 A. Yes, sir. I don't -- I'm sorry to say that I
21 don't recall where we stopped the airway and trauma box.

22 Q. Do you see the little dog in that picture?

23 A. Yes, sir.

24 Q. Do you remember seeing or hearing any dogs
25 inside of this residence that night?

1 A. No. Don't recall --

2 Q. How about --

3 A. -- a dog?

4 Q. -- outside?

5 A. I remember hearing dogs. I don't remember or
6 recall seeing any dogs there.

7 Q. Do you think that if there had been dogs
8 running around inside that house while you were with this
9 patient you would have noticed that?

10 A. Yes.

11 MR. SEARS: Thank you. I don't have any other
12 questions, Your Honor.

13 THE COURT: Members of the Jury, any questions
14 that you have?

15 MR. BUTNER: I don't have any further
16 questions, Judge.

17 THE COURT: I'm sorry. Thank you.

18 MR. BUTNER: Thanks.

19 THE COURT: Usually you speak up. So I don't
20 -- we do have a jury question, at least one. Let me see
21 counsel, please.

22 (Whereupon, proceedings were held at
23 side-bar held off the record and the
24 following proceedings were resumed
25 in open court.)

1 THE COURT: If there are any more just hand
2 them to Phil.

3 Had a couple of questions from the jury. Did
4 you or your captain get blood on your hands?

5 THE WITNESS: Your Honor, I don't recall. As
6 far as maybe a slight touch from putting the pads on,
7 that's all I remember.

8 THE COURT: Did you or your captain have to
9 move the body?

10 THE WITNESS: That's negative.

11 THE COURT: Any other questions from the jury?
12 I don't see any. Turn those over to the Clerk who makes a
13 record of those.

14 Follow-up questions to those couple of
15 questions, Mr. Butner?

16 MR. BUTNER: None from the State, Judge.

17 THE COURT: Mr. Sears?

18 MR. SEARS: No, Your Honor.

19 THE COURT: Any objection to excusing this
20 witness to go about his business?

21 MR. BUTNER: No objection.

22 MR. SEARS: No, and thank you for waiting,
23 sir.

24 THE COURT: Not subject to recall?

25 MR. SEARS: No.

1 THE COURT: You are not subject to recall.
2 You can remain for purposes of the trial or come back if
3 you wish to see. You're not excluded from the courtroom.
4 Having testified already, however, the rule excluding
5 witnesses has been evoked in this case.

6 What that means is that if you know of other
7 witnesses you may not discuss your testimony with other
8 witnesses. Jury's entitled to their testimony without any
9 influence like that. You may speak with the lawyers only,
10 but not in the presence of any other witnesses.

11 Do you understand that?

12 THE WITNESS: I understand.

13 THE COURT: All right. You may step down and
14 you're not subject to recall so I thank you. You're done.

15 THE WITNESS: Thank you.

16 THE COURT: And thank you. To the extent that
17 you had anyone else in the hallway if you would talk to
18 them and give them my apologies we're not going to call
19 them today.

20 Two minutes to 5 so we're going to excuse the
21 jury to come back at 9 o'clock tomorrow morning. 9
22 o'clock tomorrow morning. Remember the admonition. We'll
23 stand in recess.

24 (The jurors exited the courtroom.)

25 THE COURT: Record reflects the jury has left.

1 All other parties are still present. Any other issues
2 that you need to raise today before we go, Mr. Sears?

3 MR. SEARS: Yes, Your Honor, we do have a
4 matter that we want to take up on the record if that is
5 what you were asking.

6 THE COURT: That's what I'm asking.

7 MR. SEARS: Thank you.

8 THE COURT: Mr. Butner, anything else that you
9 had to present?

10 MR. BUTNER: I don't have anything at this
11 time, Your Honor.

12 THE COURT: All right. Mr. Sears.

13 MR. SEARS: Your Honor, with respect to the
14 juror who made an inquire this morning about whether he
15 could get part of a day off --

16 THE COURT REPORTER: Excuse me. Wait. I'm
17 sorry. I missed that part.

18 MR. SEARS: This is in regard to the juror who
19 earlier today made a request to get some time off to take
20 his children to the airport later this month.

21 THE COURT: Number 8 for the record.

22 MR. SEARS: Thank you, Your Honor. We've made
23 -- we've talked about him a great deal during the course
24 of the day. We've kept in mind the course with him. The
25 financial information that he provided. The information

1 about his employment and then the follow-up information
2 when we were doing the last bit of individual Voir Dire he
3 had a request to go to Mexico to visit his mother, and now
4 he has this additional request.

5 And we were particularly thinking about the
6 information of his financial situation and I don't think
7 that we fully appreciate on our side the degree to which
8 his livelihood is depending on tip income and we have seen
9 him during the course of the trial walking around town
10 during the lunch hour.

11 We have some concerns about whether he has
12 enough money to buy himself lunch. We don't understand
13 how the per diem works. Do they get paid on a daily
14 basis? How often they're reimbursed. We would hate to
15 lose another juror for the reasons that we said when our
16 first juror was excused, but there has been a progression
17 of concern from him about the length of service and, of
18 course, we're not going to be able to give him a half day
19 off in June. I suppose.

20 So we have some concerns about him and we
21 thought perhaps we have could start tomorrow by talking
22 with him individually about -- before we bring the rest of
23 the panel in about some of these issues. To me it's clear
24 that if he's not inclined to talk about the hardships,
25 he's bringing us hardship related information or

1 information that makes it difficult to serve, but maybe if
2 we could answer some of his questions about the lengthy
3 trial fund and the per diem, he might be in a better
4 position to be with us for the course of the trial.

5 THE COURT: Any problem with starting off
6 tomorrow with -- if he comes early. Today he was here at
7 8:15 or so probably. If you all can come in at quarter to
8 9, I suppose, or 9 o'clock and just be prepared to sit him
9 down. Any problem with discussing these concerns
10 reflected in this letter with him?

11 MR. BUTNER: No, there's not a problem with
12 that, Judge. We do have some concerns about Mr. Juror
13 Number 8 also in terms of him being able to make it
14 through the trial. He was really borderline hardship as
15 the Court will recall in terms of --

16 THE COURT: I'll see if I can get Margaret
17 here. She's probably gone home by now but I may want to
18 have her here to answer some of the questions relating to
19 the jury service and pay and that sort of thing.

20 MR. SEARS: Thank you, Your Honor.

21 THE COURT: Any problem with being here at
22 quarter until 9?

23 MR. SEARS: No, we'll be here.

24 THE COURT: Okay. We'll try and start as soon
25 as he gets here by then. We'll try and start with him so

1 that we can get on with the trial about 9.

2 MR. BUTNER: Okay.

3 THE COURT: Mr. Lopez, if he's here by quarter
4 to 9.

5 THE BAILIFF: See him first.

6 MR. SEARS: Sit down with --

7 THE BAILIFF: That's interesting because he
8 had asked me as we were leaving if you had done anything
9 with that. So --

10 THE COURT: And the answer's no until now.

11 THE BAILIFF: Yeah.

12 THE COURT: Good. We're all on the same waive
13 length. All right. Then if Margaret is still down in her
14 office -- would you see if you can get a message to her to
15 have her here at 8.45 in case there is a question.

16 THE BAILIFF: I'm sure she will be here but
17 let me run down and check real quick.

18 THE COURT: All right. Thank you. Anything
19 else for either side?

20 MR. SEARS: No.


21 THE COURT: We'll stand in recess. We'll
22 resume with Defendant and the lawyers at 8.45.

23 (Whereupon, the proceedings were continued
24 to Friday June 11, 2010. At 8:45 a.m.)
25

R E P O R T E R ' S C E R T I F I C A T E

I, Lisa A. Chaney, a Certified Reporter, in the State of Arizona, do hereby certify that the foregoing Pages 1 through 162 constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 27th of June 2010.



LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801

LISA A. CHANEY, CR, RPR
CERTIFIED REPORTER